COMMISSION IMPLEMENTING REGULATION (EU) 2024/2754

of 29 October 2024

imposing a definitive countervailing duty on imports of new battery electric vehicles designed for the transport of persons originating in the People's Republic of China

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union [1] ('the basic Regulation'), and in particular Article 15 thereof,

After consulting the Member States,

Whereas:

1. PROCEDURE

1.1. Initiation

(1) On 4 October 2023, the European Commission ('the Commission') initiated on its own initiative an anti-subsidy investigation with regard to imports into the Union of new battery electric vehicles ('BEVs') designed for the transport of persons originating in the People's Republic of China ('the country concerned', 'the PRC', or 'China') pursuant to Article 10(8) of the basic Regulation. It published a Notice of Initiation in the *Official Journal of the European Union* [2] ('the Notice of Initiation').

(2) The Commission initiated the investigation on the grounds that imports of BEVs originating in the PRC are being subsidised and are thereby causing injury [3] to the Union industry.

(3) After an in-depth analysis of recent market developments and considering the sensitivity of the electric vehicle sector and its strategic importance to the EU economy in terms of innovation, value added and employment, the Commission collected market information from various independent sources. This information tended to show the existence of subsidisation by the PRC which negatively affects the situation of the Union BEV industry.

(4) On the basis of readily available information, there was sufficient evidence demonstrating that imports of the BEVs originating in the PRC benefit from countervailable subsidies provided by the Government of the People's Republic of China ('the GOC'). Those subsidies have allowed the subsidised imports to rapidly increase their market share in the Union to the detriment of the Union industry.

(5) The available evidence showed the likelihood of substantially increased subsidised low-priced imports that would pose an imminent threat of injury to an already vulnerable Union industry. Such a surge of low-priced imports, gaining significant market share in a rapidly growing market in which a significant and sustained rate of investments is needed as the Union market transitions to full electrification, would lead the Union industry to incur heavy financial losses which could become rapidly unsustainable.

[1] OJ L 176, 30.6.2016, p. 55.
[2] Notice of initiation of an anti-subsidy proceeding concerning imports of new battery electric vehicles designed for the transport of persons originating in the People's Republic of China (OJ C, C/2023/160, 4.10.2023, ELI: http://data.europa.eu/eli/C/2023/160/oj).
[3] The general term 'injury' refers to material injury as well as to threat of material injury or material retardation of the establishment of an industry as set out in Article 2(d) of the basic Regulation.

(6) In these special circumstances, since the Commission was in possession of sufficient evidence tending to show the existence of subsidisation, threat of injury and causal link required for the initiation of an anti-subsidy investigation, it decided, in accordance with Article 10(8) of the basic Regulation, to proceed with such an initiation without having received a written complaint by or on behalf of the Union industry.

(7) Prior to the initiation of the anti-subsidy investigation, the Commission notified the GOC that it had decided to initiate an *ex officio* proceeding concerning imports of new BEVs from the PRC and invited the GOC for consultations in accordance with Article 10(7) of the basic Regulation. The GOC accepted the offer for consultations, which were held on 2 October 2023. During the consultations, due note was taken of the comments submitted by the GOC. However, no mutually agreed solution could be reached.

1.2. **Registration**

(8) As set out in recital (8) of the Commission Implementing Regulation (EU) 2024/1866 ([4]) ('the provisional Regulation'), the Commission, on its own initiative, made imports of new BEVs designed for the transport of persons, originating in China, subject to registration as of 7 March 2024 by Commission Implementing Regulation (EU) 2024/785 ([5]) ('the registration Regulation').

1.3. **Provisional measures**

(9) In accordance with Article 29a of the basic Regulation, on 12 June 2024, the Commission provided parties with a summary of the proposed provisional duties and details about the calculation of the subsidy rates. Interested parties were invited to comment on the accuracy of the calculations within three working days. Comments were received from the sampled Chinese producers BYD Group, SAIC Group, and Geely Group, and from exporting producers Great Wall Motor Co. Ltd. ('GWM'), Spotlight Automotive Co. Ltd. ('Spotlight'), and Volkswagen (Anhui) Automotive Co. Ltd. ('Volkswagen (Anhui)').

(10) On 4 July 2024, the Commission imposed provisional countervailing measures on imports of BEVs originating in China by Implementing Regulation (EU) 2024/1866.

1.4. **Subsequent procedure**

(11) Following the disclosure of the essential facts and considerations on the basis of which provisional countervailing measures were imposed ('provisional disclosure'), the BYD Group, SAIC Group, and Geely Group's subsidiaries Polestar Performance AB ('Polestar') and Volvo Car Cooperation, exporting producers Dongfeng Group, GWM, NIO Holding ('NIO'), Spotlight, Tesla (Shanghai) Co. Ltd. ('Tesla (Shanghai)'), Volkswagen (Anhui), the Government of China ('GOC'), the China Chamber of Commerce for Import & Export of Machinery & Electronic Products ('CCCME'), the China Association of Automobile Manufacturers ('CAAM'), Union producers Company 18, Company 22 and Company 24, and the German association Verband der Automobilindustrie e.V. submitted comments.

([4]) Commission Implementing Regulation (EU) 2024/1866 of 3 July 2024 imposing a provisional countervailing duty on imports of new battery electric vehicles designed for the transport of persons originating in the People's Republic of China (OJ L, 2024/1866, 4.7.2024, ELI: http://data.europa.eu/eli/reg_impl/2024/1866/oj).

([5]) Commission Implementing Regulation (EU) 2024/785 of 5 March 2024 making imports of new battery electric vehicles designed for the transport of persons originating in the People's Republic of China subject to registration (OJ L, 2024/785, 6.3.2024, ELI: http://data.europa.eu/eli/reg_impl/2024/785/oj).

(12) At the outset, the Commission noted that the CCCME and the GOC commented in detail on the assessments made by the Commission in the provisional Regulation on injury and causality, often without acknowledging the findings and their justification provided by the Commission in the provisional Regulation. The CCCME and the GOC likewise reiterated a large number of comments that were raised in its post-initiation submissions again without addressing the specific explanations and reference to the relevant evidence provided by the Commission in the provisional Regulation. The Commission also noted that the CCCME and the GOC mainly criticised the analysis made by the Commission without bringing new evidence in this regard or supporting the statements made with any evidence. In the sections below, the Commission addressed in detail the comments raised by the CCCME without, however, repeating identical comments raised in various sections.

(13) The parties who so requested were granted an opportunity to be heard. Hearings took place with the BYD Group, the CCCME, the Geely Group, the GOC, Polestar, the SAIC Group, Spotlight, Volkswagen (Anhui), Company 22, Company 24, and Company 27.

(14) The Commission continued to seek and verify all the information it deemed necessary for its definitive findings. When reaching its definitive findings, the Commission considered the comments submitted by interested parties and revised its provisional conclusions when appropriate. In order to have at its disposal more comprehensive data on the Union's sales prices, cost of production, and profitability in the post-investigation period, the sampled Union producers were requested to provide additional data. All sampled Union producers submitted the requested information.

(15) On 20 August 2024 the Commission informed all interested parties of the essential facts and considerations on the basis of which it intended to impose a definitive countervailing duty on imports of BEVs originating in the PRC ('definitive disclosure'). All parties were granted a period within which they could make comments on the definitive disclosure.

(16) Parties who so requested were also granted an opportunity to be heard following the definitive disclosure. Hearing took place with the SAIC Group, Company 27, the BYD Group, the CCCME, the GOC, Tesla (Shanghai), the Geely Group, Company 22 and Polestar.

(17) Comments following definitive disclosure were received from the BYD Group, CATL, the GOC, Tesla (Shanghai), GWM, the CCCME, the CAAM, the SAIC Group, the Geely Group, VDA, Eurofer, Company 27, Company 18, Company 24, Company 22, and Polestar.

(18) On the basis of these comments, the Commission revised some of its provisional findings, modified some of the considerations on the basis of which it intended to impose a definitive countervailing duty and informed all interested parties thereof ('additional definitive disclosure') on 9 September 2024.

(19) Comments on the additional definitive disclosure were received from the GOC, the CCCME, BYD, Tesla, Smart and Company 18 (only in confidential version). In addition, Company 18 also submitted comments, in confidential version, after the deadline for comments on the additional disclosure. Most of these comments were already addressed in the specific confidential disclosure addressed to the company.

1.5. **Sampling**

1.5.1. *Sampling of Union producers*

(20) Following provisional disclosure, the CCCME and the GOC claimed, on one hand, that the sample of Union producers was unknown and unrepresentative and, on the other hand, that the interested parties could not assess the representativity of the sample. The CCCME and the GOC further claimed that it was not known if Union OEM producers were included in the sample, whether all the companies in the sample are the Union OEMs/companies

transitioning from the production of ICEs to BEVs or there were other BEV producers in the sample, as the Union producers transitioning from ICEs to BEVs may be in a worse economic position than other Union producers. The CCCME and the GOC also claimed that the sample of Union producers was unrepresentative as the Commission did not apply the single economic entity principle to the Union producers that were sampled, even though it was applied with regard to the sampled exporting producers. The CCCME and the GOC further claimed that the single economic entity principle was applied to the Union industry in previous trade defence investigation such as *Silicon metal from China* ([6]) where two production entities (FerroPem and FerroAtlantica) of the Union producer group, Ferroglobe group, were considered related parties and the Union producer's production by both the production entities were considered together. The CCCME and the GOC also claimed that the single economic entity principle was relevant for the establishment of the Union industry sales prices which are compared with the export price for the undercutting and price suppression analysis.

(21) As it was explained in recital (12) of the provisional Regulation, anonymity was granted to the Union producers due to a risk of significantly adverse effect in the form of retaliatory actions. Therefore, the Commission cannot disclose the identity of the sampled Union producers. However, the anonymity granted to the sampled Union producers does not make the sample unrepresentative. As explained in recital (26) of the provisional Regulation, the selection of the sample was based on the largest representative volume of sales and production in the Union of the like product during the investigation period ([7]). The Commission also considered the geographical spread of Union producers within the Union as well as ensured the inclusion of a wide range of BEVs models. The sampled Union producers accounted for 38 % of sales and 34 % of total production volume of the Union industry in the investigation period. Furthermore, after the verification visit of the sampled Union producers, on 4 June 2024 the Commission added a Note to the file ([8]) and confirmed that the sampled Union producers amounted to 32 % of sales in the Union and 30 % of production in the Union in the investigation period. Furthermore, disclosing whether all sampled companies were OEMs that produced ICE vehicles and are producing BEVs, likewise, would inadvertently disclose the identity of certain Union producers and thus the Commission would breach its legal obligation to keep the anonymity granted to the Union producers. Therefore, the request to disclose this information was rejected.

(22) Finally, the CCCME confused the single economic entity principle with sampling at the level of the group. For the sake of clarity, the single economic entity principle is applied in certain conditions for the calculation of the export price at ex-works level (i.e. at the factory gate of the producer) for dumping margin calculations. In the present anti-subsidy investigation, the Commission did not need to calculate an ex-works export price and therefore this principle is not applied in the current investigation. As concerns sampling of the Union producers, the Commission informed interested parties at the initiation of the investigation that it will be made at the production entity level and not at group level ([9]). This is the Commission's common practice for the sampling of Union producers and there was no information available that could suggest that a different approach was warranted in this investigation. The CCCME and the GOC did also not provide any evidence in this regard. Furthermore, in the *Silicon metal from China* investigation, contrary to CCCME and the GOC's claim, the Commission did not apply the single economic entity principle but investigated two producers from the same group. Finally, in the current investigation the calculation of undercutting margin was made at the level of the price to the dealer in the Union as explained in recital (1023) of the provisional Regulation, which is different than the ex-works level.

([6]) Commission Implementing Regulation (EU) 2022/1394 of 11 August 2022 imposing a definitive anti-dumping duty on imports of silicon originating in the People's Republic of China, as extended to imports of silicon consigned from the Republic of Korea and from Taiwan, whether declared as originating in the Republic of Korea or Taiwan or not, following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and the Council (OJ L 211, 12.8.2022, p. 86).

([7]) As explained in recital (9) of the provisional Regulation, the investigation of subsidisation and injury covered the period from 1 October 2022 to 30 September 2023 ('the investigation period' or 'the IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2020 to the end of the investigation period ('the period considered').

([8]) t24.004547.

([9]) This information was specified in the sampling form of the Union producers which was made available of the DG Trade website at the initiation of the investigation.

(23) Therefore, the conclusions in recitals (24) to (45) of the provisional Regulation were confirmed.

1.5.2. *Sampling of importers*

(24) In the absence of any comments with respect to the sampling of importers, the conclusions set out in recitals (46) to (47) of the provisional Regulation were confirmed.

1.5.3. *Sampling of exporting producers in the PRC*

(25) Following provisional disclosure, the BYD Group submitted that the selection of the sample distorted the resulting findings, as Tesla (Shanghai) was not sampled despite its large volume of exports of BEVs to the Union market, and that in almost every trade remedy investigation, the Commission selected the sample based on the volume of exports. The BYD Group also claimed that the Commission did not provide a clear explanation for not sampling Tesla (Shanghai) and on what ground the Commission accepted Tesla (Shanghai)'s request for individual examination.

(26) Following definitive disclosure, the GOC and CCCME reiterated their claim that the sample of Chinese exporting producers selected was result-oriented, biased and inconsistent with Article 27(1) of the basic Regulation. Notably, the non-inclusion of Tesla (Shanghai) in the Chinese exporting producers' sample ran counter to the very purpose of sampling, the basic Regulation, and reflected the Commission's discriminatory approach. According to the GOC and CCCME, the non-inclusion of Tesla (Shanghai) made the sample unrepresentative, and Tesla (Shanghai) could be reasonably investigated within the time frame. Moreover, the Commission had the time and resources to verify this company and establish its subsidy rate and therefore it could have been included in the sample at the outset. By not including Tesla (Shanghai) in the sample, the Commission artificially increased the weighted average duty applicable to the cooperating non-sampled Chinese exporting producers, showing a targeted and selective approach.

(27) The Commission highlighted that similar allegations were already addressed in recitals (54) and (55) of the provisional Regulation. The selection of the sample fully complied with the provisions of Article 27 of the basic Regulation, taking into account the specificities of the case and was therefore considered to be representative for the Chinese exporting BEV sector. The Commission did not have a targeted and selective approach in establishing the sample. The reasons why the Commission accepted the individual examination request are explained in recital (30) of this Regulation. That the Commission could provide an individual subsidy rate to Tesla (Shanghai) does not mean that, at the time of the selection of the sample, the inclusion of this exporter was possible or appropriate.

(28) Therefore, the conclusions in recitals (48) to (76) of the provisional Regulation were confirmed.

1.6. **Individual examination**

(29) Tesla (Shanghai), an exporting producer in the PRC, requested and was granted an individual examination under Article 27(3) of the basic Regulation.

(30) The Commission accepted the individual examination request of Tesla (Shanghai) given the simple corporate structure of the company, which allowed the Commission to have sufficient time and resources to examine the company. No other individual examination requests were received.

1.7. **Claims on procedural issues and rights of defence**

(31) Following provisional disclosure, the BYD Group, the CAAM, the CCCME, the Geely Group, the GOC, the SAIC Group, and NIO commented on procedural issues.

(32) Following definitive disclosure, the CCCME and the GOC commented on procedural issues.

(33) Following provisional disclosure, the CAAM submitted that the Commission required companies to supply information, details and 'business secrets' beyond the scope of the investigation.

(34) The Commission disagreed with the claim. The Commission considered the requested information from the sampled exporting producers and their related parties necessary to assess the existence of countervailable subsidies regarding BEVs and their parts and components. Moreover, as already stated in recital (284) of the provisional Regulation, it is for the Commission to determine what information is deemed necessary for the investigation, and not for a party to make that determination. The Commission also recalls that, pursuant to Article 29(6) of the basic Regulation, the information received within the framework of this investigation was used only for the purpose of assessing the existence of countervailable subsidisation in accordance with the basic Regulation and the SCM Agreement. Therefore, the claim was rejected.

(35) Following provisional disclosure, the BYD Group submitted that the *ex officio* initiation of the investigation was unwarranted. The BYD Group claimed that the wording of 'special circumstances' contained in Article 10(8) of the basic Regulation must inform something more than what paragraph 2 of Article 10 of the basic Regulation provides for, and that the explanations given in the Notice of Initiation describe a situation no different from an initiation of the investigation based on a written complaint.

(36) The BYD Group added that the evidence on which the Commission initiated the investigation was a collection of alleged subsidies based on media reports, publicly available audited financial reports of certain holding companies of companies not only producing BEVs and a list of policies and references from previous investigations on imports of products involving different sectors of industry from China, and that a listing of a series of policies and subsidies from previous cases could not be considered compliant with the provisions of Article 11(2) of the SCM Agreement and to meet the standard of sufficiency of evidence regarding the BEV sector.

(37) Moreover, the BYD Group submitted that the allegations on threat of material injury and in particular transition of production structures of the Union automobile industry could not justify an *ex officio* initiation of the investigation, since the overall economic performance of the Union industry showed quite strong forward momentum.

(38) The Commission recalled that the Initiation document and the memorandum contained sufficient evidence tending to show the existence of subsidisation, threat of injury and causal link required for the initiation of an anti-subsidy investigation, pursuant to Article 10(8) of the basic Regulation, and that the special circumstances for the initiation of this proceeding have been spelled out in great detail both in the initiation document ([10]), and also in the Notice of Initiation ([11]). Moreover, as already addressed in recital (119) of the provisional Regulation, for all different schemes alleged in the Initiation document, the Commission provided the legal basis, the specificity of these subsidy schemes to the BEV sector, and, to the extent the Commission had access to it, detailed information from publicly available sources on amounts of subsidies provided by the GOC to the BEV exporting producers. Therefore, the Commission considered that it had sufficient evidence of countervailable subsidisation in accordance with the basic Regulation and the WTO Agreement of Subsidised and Countervailing Measures ('SCM Agreement'). The Commission noted that the BYD Group does not dispute the existence of policies but only the extent to which they are binding for the BEV sector. The Commission further observed that the readily available information provided evidence indicating that the BEV sector is mentioned in several government documents. The BYD Group failed to produce any evidence showing that those documents would not be applicable to the product concerned. Therefore, the arguments were deemed moot.

([10]) See Initiation document, pp. 2-4.
([11]) OJ C, C/2023/160, 4.10.2023, ELI: http://data.europa.eu/eli/C/2023/160/oj, Section 1.

(39) Furthermore, in recital (117) of the provisional Regulation, it was explained that in the Initiation document the Commission justified sufficiently the *ex officio* initiation. In particular, the Commission considered the rapid market penetration by the Chinese low-priced and subsidised imports of BEVs, which threatens to irreparably damage the Union industry, to be of a special nature justifying the initiation of an ex officio investigation. The subsidisation of the Chinese BEV sector caused a large and accelerating influx of imports of Chinese produced BEVs on the Union market at prices that depress prices or prevent price increases which otherwise would have occurred, threatening to cause material injury to the Union BEV industry, which might be irrevocable because of the technological development and level of R & D financing required. Therefore, the claims were rejected.

(40) Following provisional disclosure, the SAIC Group and NIO claimed that since the Notice of Initiation of the ongoing investigation was published on 4 October 2023, under Article 12(1) of the basic Regulation, the Commission should have imposed provisional duties by 4 July 2024 and not 5 July 2024, i.e. 'no later than nine months from the initiation of the proceedings'.

(41) However, according to Article 3.1 of Regulation (EEC, Euratom) No 1182/71 of the Council ([12]) determining the rules applicable to periods, dates and time limits, 'where a period expressed in days, weeks, months or years is to be calculated from the moment at which an event occurs or an action takes place, the day during which that event occurs or that action takes place shall not be considered as falling within the period in question'. This means that the starting date for computing the nine months deadline was the day following the publication of the Notice of Initiation, i.e. 5 October 2023, and lapsed on 5 July 2024, in accordance with Article 3(2)(c) of Regulation (EEC, Euratom) No 1182/71. The Commission considered that it had complied with the relevant provisions of the basic Regulation and the claim was rejected.

(42) Following provisional disclosure Geely Group claimed that the continuous stream of questionnaires and additional clarification requests of the Commission placed an unreasonable burden on the Group, violating its due process rights, namely, it was asked to provide large amount of information just one week after sampling, before the minimum 30-day period for sampled exporting producers to respond to the questionnaire, as required under the SCM Agreement and basic Regulation.

(43) The Commission considered that its requests for information were reasonable, and it engaged with the Geely Group in full respect of its procedural rights. The Commission recognized the efforts made by the Geely Group in responding to the Commission's questionnaires and deficiency requests, which it considered proportional to the size and complexity of the Geely Group itself. It noted that all the replies provided by the Group were analysed and verified, where possible, thereby ensuring that the information provided by the Geely Group corresponded to the Group's efforts and resulted in findings that were closest to the situation of the Group during the IP. Therefore, the claim was rejected.

(44) The Geely Group further claimed that after the questionnaire and sampling decision were published, the Commission expanded the scope of the responding entities ([13]). Geely Group compiled and submitted information for over 120 entities, even though many of these submissions were not directly relevant to the investigation. This unreasonable burden violated party's due process rights.

(45) The Commission noted that the scope of responding entities was not extended by the letter in the reference. The related companies in the group with the activities specified in the Commission's letter were critical in establishing the facts of subsidization of the group in any subsidy investigation, while the number of responding entities was proportional to the size and complexity of any exporter group investigated. Therefore, the information provided by these related companies only enhanced the adequate findings of the Geely Group, which were closest to the situation of the group during the investigation period, thereby ensuring that the rights of the Geely Group were respected. Therefore, the claim was rejected.

([12]) Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits (OJ L 124, 8.6.1971, p. 1).

([13]) The Commission letter to sampled exporters 'Commission – Letter to the sampled exporters AS689' of 25 October 2024, with TRON reference t23.005030.

(46) The Geely Group further claimed that the investigation placed an extreme burden on the Group, namely it submitted over 280 responses, often meeting very short deadlines, managed 14 weeks of on-site verification across three locations, producing over 880 verification exhibits. Despite the repeated requests ([14]) under Article 12.11 of the SCM Agreement, these requests were rejected by the Commission.

(47) The Commission observed that all requests submitted by the Geely Group were duly considered throughout the course of the investigation. However, the missing elements necessary to complete the findings of the Group were required and used in accordance with Article 28 of the basic Regulation, as aligned with the standard procedures of the anti-subsidy investigations as stipulated in Article 10(8) of the basic Regulation. Therefore, the claim was rejected.

(48) Following provisional disclosure, the Geely Group argued that due to the anonymity granted to Union producers, suppliers and importers (i) the Commission treated as confidential the data pertaining to the Union industry, thus materially affecting disclosure of the essential information about the injury assessment which violated the sound exercise of Geely Group's right of defence, (ii) it had little visibility into the information gathered from the Union industry by the Commission, and (iii) the Commission applied very broad confidentiality to all submissions by Union parties.

(49) The Commission did not treat all the information related to the Union industry as confidential, only the information that could disclose the identity of the Union industry. As it was explained in recital (16) of the provisional Regulation, because of the low number of groups manufacturing BEVs in the Union market and the significant amount of public and subscription-based information available about these groups, the Commission could not disclose certain information related to the sampled Union producers as such information could reveal the identity of the sampled Union producers. In Section 4 of the provisional Regulation, the Commission analysed all injury indicators requested by the basic Regulation. Furthermore, the Commission added to the non-confidential file of the investigation, the non-confidential questionnaire replies of the four sampled Union producers, the non-confidential pre-verification letters for the on-spot verification visit as well as the non-confidential mission reports such as in any other investigation. Despite the Geely Group's claim, the Commission did not apply a very broad confidentiality treatment to all submissions by Union parties. Proper non-confidential versions of such submissions were added to the non-confidential file of the investigation and the Geely Group did not mention what exactly was missing in these submissions. Therefore, these claims were rejected.

(50) Following provisional disclosure, the CCCME, the GOC, the Geely Group and the SAIC Group claimed that, as regard the undercutting margin calculations, the Commission provided insufficient explanation and factual details for CCCME and the GOC and, therefore, they were not able to understand the calculations and make meaningful comments. In particular, the CCCME, the GOC and the SAIC Group argued that the Commission had not provided any reasoned explanations as to how the description of the Product Control Numbers ('PCNs') and the PCN-level aggregate unit prices and volumes of the Union industry could result in the disclosure of the identities of the sampled Union producers because the data is aggregated for the four sampled producers. This claim was also reiterated by the CCCME and the GOC after definitive disclosure.

(51) Therefore, the CCCME, the GOC and the SAIC Group requested the Commission to disclose: (i) the PCNs of the Chinese exporting producers and the Union producers used for price comparability; (ii) the PCN-wise quantity and value of the seven PCNs of the Union industry used for the comparison. The CCCME and the GOC requested the Commission to disclose (i) the undercutting margin of the five comparable PCNs, i.e., excluding the closely resembling PCNs, and the sales matching percentage of the Chinese sampled exporters and the Union sampled

([14]) Geely Group's response to the Commission's letter on the use of facts available 'AS689 – SENSITIVE – Geely Group – Article 28 letter response' of 30 April 2024, with TRON reference t24.003464.

producers if the two close resembling PCNs were to be excluded; (ii) the difference in the PCN elements and whether adjustments were made to account for the differences. A similar request was also made by the SAIC Group. The SAIC Group also requested the Commission to disclose: (i) how many PCNs were sold by the Union sampled producers, (ii) PCNs sold by the Union sampled producers during the investigation period in total and (iii) the quantity and value of the seven PCNs matched with the Chinese PCNs as a percentage of the total Union sales of the sampled Union producers. Furthermore, the CCCME and the GOC argued that it was known that the Union BEV producers' sales pertained mainly to the luxury/premium segments in which the Chinese producers have negligible sales if at all and therefore the quantum of Union sales comparable to the sampled Chinese exporting producers' sales was necessary to understand the representativeness of the calculation.

(52) The Commission disclosed the calculation of the weighted average undercutting margin to the three sampled Chinese exporting producers only. However, it appears that these companies provided these files to the CCCME and the GOC although this information was not disclosed to the CCCME and the GOC. Furthermore, the CCCME was also representing Chinese exporting producers that were not sampled and therefore did not receive from the Commission the calculation of the weighted average undercutting margin. Furthermore, the three sampled Chinese exporting producers also received from the Commission their detailed calculations of the selling price to the dealer for each of their sale transaction. Therefore, it was reasonable to conclude that the sampled Chinese exporting producers also provided to the CCCME and the GOC these files and therefore the CCCME and the GOC was able to calculate the volume and sales prices per PCN for the three Chinese sampled exporting producers. Furthermore, as the Commission also disclosed the total volume and value of the sales of the sampled Chinese exporting producers, the CCCME and the GOC can verify these data accordingly. Moreover, the Commission disclosed the matching percentage for the sales of the Chinese exporting producers (i.e. the percentage of the sales of the sampled Chinese exporting producers that was matched with the sales of the sampled Union producers). As the matching was very high overall and for each sampled Chinese exporting producer, and each PCN was sold in different volumes, the CCCME and the GOC can perfectly understand which PCNs of the Chinese exporting producers were used in the calculation of the undercutting margin.

(53) Furthermore, in the individual disclosure sent to the sampled Chinese exporting producers, the Commission explained that the PCNs, quantity and prices of the Union industry at PCN level could not be disclosed as they could reveal the identity of the sampled Union producers. Moreover, in recital (95) of the provisional Regulation, the Commission explained that the Union BEV market was made of a small number of groups of producers. There was a significant amount of public information as well as very detailed information available based on a paid subscription regarding the Union BEV industry that CCCME, the GOC, the Geely Group and SAIC Group could have access to. For example, the technical descriptions of each BEVs sold by the Union industry was publicly available either in the catalogue/brochure of the Union producers or dealers as well as in certain databases such as Electric Vehicle Database ([15]). Therefore, any interested party can create the PCNs for all the models of BEVs sold by the Union industry and the Chinese exporting producers on the Union market. Furthermore, based on public information published by European Environment Agency ('EEA') or paid subscription from S&P Global Mobility, the CCCME, the GOC, the SAIC Group and the Geely Group can understand the volume of sales of each model of BEVs on the Union market. It follows that by disclosing the PCNs of the Union industry and/or the volume of sales of the Union industry in the investigation period as well as the PCN-wise quantity and value of the seven PCNs of the Union industry used for the comparison, in view of the large information publicly and paid subscription available there is a very high risk that the identity of the sampled Union producers will be revealed.

(54) As concerns the disclosure of the undercutting margin of the five comparable PCNs, the Commission noted that it disclosed the undercutting margin for each PCN that was matched with the Chinese PCNs (7 PCNs out of 17 PCNs exported by the Chinese exporting producers during the investigation period). However, the Commission did not see the point of disclosing such calculations, as the Chinese exporting producers clearly did not export only these five PCNs on the Union market in the investigation period.

([15]) https://ev-database.org.

(55) As concerns the difference in the PCN elements and whether adjustments were made to account for these differences, the Commission hereby clarified that the difference in the PCN and the close resembling PCN concerned only the power of the BEVs, i.e. a more powerful Chinese BEVs was compared to a less powerful Union BEV. The Commission did not make any adjustment for the difference in power, as a more powerful BEV was more expensive than a less powerful BEV, all other characteristics of the PCNs being the same.

(56) Furthermore, the number of PCNs sold by the Union industry is irrelevant for the undercutting calculation. Moreover, as explained in recital (53) of this Regulation, the Commission cannot disclose the PCNs sold by the sampled Union producers during the investigation period.

(57) As concerns the quantity and value of the seven PCNs matched with the Chinese PCNs as a percentage of the total Union sales of the sampled Union producers, in recital (1044) of the provisional Regulation the Commission stated that the matching between the Chinese PCNs and the Union PCN was very high on average, and this matching corresponds to 88 % of total sales of the sampled Union producers. The Commission noticed that there was a typo in recital (1044) of the provisional Regulation, the matching corresponded to 83 % instead of 88 % of the sampled Union producers. If the closely resembling PCNs were excluding, the matching was 61 %. This calculation was made for volume of sales. A calculation based on the value of sales is irrelevant in this regard as the prices of the PCNs are different and therefore the result would be misleading.

(58) Moreover, as it was highlighted in recital (1042) of the provisional Regulation there was no universally accepted segmentation for passenger cars and it was not clear what 'entry', 'mid', 'premium' and 'luxury' brands meant as there was a wide margin of interpretation. Nevertheless, for the sake of clarification, it is not factually correct that the Union BEV producers' sales pertained mainly to the luxury/premium segments in which the Chinese producers have negligible sales. For example, according to LMC Automotive or S&P Global Mobility, the Union producers like e.Go Mobile, Hyundai, Renault, Stellantis, and Volkswagen sell brands than are not considered luxury/premium brands. Furthermore, Geely has sold in the Union the brand Polestar 2 which is considered a premium brand by LMC Automotive or S&P Global Mobility.

(59) Finally, the Commission mitigated the impact of the less than full disclosure by providing a very detailed assessment of the methodology employed and an analysis of the various players, sales channels and sales models employed in the investigation period. As explained above, further details could not be disclosed because of the risk that the identities of the Union producers would be revealed. This approach is justified because the Union BEV market is open and transparent and all players on the market have well developed marketing capabilities to examine the models of their competitors. It is for these reasons that further details of the undercutting calculation such as PCNs cannot be disclosed.

(60) Therefore, these requests were rejected.

(61) Following provisional disclosure, the SAIC Group stated that it did not receive an individual undercutting margin calculation.

(62) There is no legal obligation for the Commission to calculate an undercutting margin per sampled exporting producers. The undercutting margin is an injury indicator and therefore the calculation of a weighted average undercutting margin is sufficient for the injury assessment. This is different than the injury margin (underselling margin) that must be calculated per exporting producer when the duty is based on underselling margin. Therefore, this claim was rejected.

(63) Following provisional disclosure, the Geely Group claimed that in the undercutting calculations the Commission used distinct PCNs from those that Geely Group was instructed to use by the Commission and no explanation of the scope of the new PCNs was given by the Commission.

(64) However, the Commission did not use different PCNs for the calculation of the undercutting margin from the ones that it asked the sampled exporting producers and sampled Union producers to use. The Commission simply replaced each PCN with PCN1, PCN2 etc. in order to not disclose the exact PCNs used in the calculation of undercutting as it could reveal the identity of the sample Union producers as explained in recital (53) of this Regulation. Therefore, this claim was rejected.

(65) Following definitive disclosure, the GOC and the CCCME argued that the definitive disclosure failed to provide the essential facts underpinning the Commission's findings of subsidisation and threat of injury caused thereby, especially regarding (i) the alleged preferential lending, (ii) the alleged provision of inputs and (iii) land use rights at less than adequate remuneration, (iv) the factual basis for the Commission's statement in recital (771) of this Regulation that the Union producers' sales quantities would have been vastly different and large in the absence of Chinese BEV imports, (v) how the Commission filtered EEA data and split them into Chinese brand BEV imports and self-imports and assessed the origin of the BEVs; the basis for the segregation of the EEA data into product concerned and non-product concerned; the basis for the split of Tesla's EU and non-EU production of Model Y, (vi) the factual basis for the Commission's determination that 'the situation of the Union industry will get worst as the subsidised imports from China at undercutting prices will increase in the foreseeable future', (vii) the factual basis relied upon by the Commission in its non-attribution analysis for dismissing (a) the self-imports by the Union industry, (b) the intra-Union industry competition, and (c) the Union industry transitioning from ICEs to BEVs as well as other known factors having a negative impact on the situation of the Union industry, and (viii) the factual basis for the Commission's conclusion that any increases in cost due to regulatory issues would have affected the Union industry merely in the past.

(66) At definitive disclosure, the Commission informed all interested parties of its findings in a General Disclosure Document and provided detailed information on the methodology and calculations done regarding the subsidy rates of the sampled and individually examined companies, including details on the choice of the sample, preferential lending, the provision of inputs and land use rights for less than adequate remuneration. A detailed overview of the comments received regarding these subsidy schemes is set out in Sections 3.5 and 3.7 below.

(67) Concerning point (iv), in recital (771) of this Regulation the Commission stated that it disagreed that price suppression would have occurred in the absence of Chinese imports and that clearly the Union market would have been vastly different had large quantities of subsidised Chinese imports not been present on the Union market at prices which undercut the Union prices. In fact, in the absence of unfair Chinese competition, the Union industry would have sold much more BEVs on the Union market (of note, the subsidised imports unfairly gained market share during the period considered at the expense of sales by the Union industry, the Chinese sold similar BEVs as the Union industry as the matching between the Chinese PCNs and the Union PCNs in the investigation period was above 90 % for each of the exporting producers as explained in recital (1031) of the provisional Regulation), which would have allowed the Union industry to reduce unit costs taking advantage of a much better ability to spread its fixed costs over more sales. This would have enabled the Union producers to set prices at more profitable levels within the context of the transition of the market from ICE vehicles to BEVs.

(68) Concerning point (v), these have been addressed in recitals (716) and (717) of this Regulation.

(69) Concerning point (vi), as explained in recital (1023) of this Regulation, the Commission concluded that the imports from China would increase after assessing several measures indicating likelihood of further substantial increase in imports in recitals (1113) to (1118) of the provisional Regulation, the attractiveness of the Union industry in recitals (1119) to (1129) of the provisional Regulation, the likely evolution of market shares of Chinese imports on the Union market in recitals (1130) to (1137) of the provisional Regulation. Furthermore, the Commission concluded in recital (1138) of the provisional Regulation that it was likely that there would be

an increase of market shares mainly from Chinese brands in the foreseeable future by assessing the high number of announcements made by the Chinese exporting producers for launching new BEVs models on the Union market as explained in recitals (1126) and (1127) of the provisional Regulation, while the Union ICE OEMs transitioning to production of BEVs did not announce any major plans to import BEVs from China and most of them had one BEV model or brand that was imported from China in significant lower volumes as compared to their production in the Union. Moreover, the stocks of BEVs in the Union of Chinese BEVs as established in recitals (1157) to (1159) of the provisional Regulation are a relevant indicator for future pressure exercised by the Chinese BEVs on the Union industry as these quantities are clearly mainly intended for sale on the Union market.

(70) Furthermore, an increase in market share of Chinese imports resulted into a decrease in market share of the Union industry, which translates into lower production volume for the Union industry, and therefore higher unit costs. On the other hand, in order to be able to compete with the Chinese BEVs, the Union industry would have to decrease prices and therefore its financial losses would increase. Moreover, an industry that continuously loses market share and records increasing financial losses will not be able to continue to invest and also not able to launch new BEVs models on the Union market. Therefore, the situation of the Union industry will get worst as the subsidised imports from China at undercutting prices will increase in the foreseeable future.

(71) Concerning point (vii), the self-imports of the Union industry as a factor causing a threat of injury to the Union industry was addressed in recital (1213) of the provisional Regulation and recital (1218) of this Regulation. In particular, in recital (1218) of this Regulation, the Commission stated that it performed an analysis of the so-called self-imports in recitals (1212) to (1214) of the provisional Regulation and provided a breakdown of the market share of imports of (i) Chinese exporting producers related to the Union ICE OEMs transitioning to production of BEVs, (ii) Tesla and (iii) all other Chinese imports in Tables 12a and 12b of the provisional Regulation under recitals (1132) and (1134) respectively. The Commission further explained that this analysis should be considered together with the data in Table 13 of this Regulation. Moreover, the Commission stated that the legal standard on causation requires that all imports originating in the country concerned should be assessed collectively. This is in fact what the Commission has done in Section 6.1 of the provisional Regulation. Additionally, the Commission, broke down Chinese imports, using, inter alia, Tables 12a and 12b of the provisional Regulation and Table 13 of this Regulation, in order to determine developments in the profile of Chinese imports. The Commission concluded that imports of Chinese brands were increasing in importance and that sales on the Union market were set to increase, due to the availability of stocks and announcements made concerning the increase of imports on the Union market in the post-IP and beyond in the coming years. This conclusion was also confirmed by the post-IP data that showed that the imports of Chinese brands significantly increased to 14,1 % in the second quarter of 2024, while all the other imports from China decreased as shown in Table 10 of this Regulation. Thus, the Commission properly carried out an analysis of the so-called self-imports and concluded that those imports were not likely to contribute to the threat of material injury.

(72) Moreover, the intra-Union industry competition as a factor causing a threat of injury to the Union industry was addressed in recitals (1225) and (1227) of this Regulation. In particular, the Commission explained that while the CCCME and the GOC did not submit any evidence about how intra-Union industry competition was having or could have a negative effect on the Union producers, in any event, the purpose of the investigation was to assess whether the imports of BEVs from China were subsidised, were threating the Union industry and if it was in the Union interest to impose countervailing measures if the legal conditions were met. The Commission further explained that the investigation found that for the Union industry, its deteriorating situation was the result the unfair outside competition from subsidised Chinese imports that threaten it with material injury. This investigation did not assess the competition between the Union producers on the Union market as the findings concern the Union industry as a whole. Moreover, the Commission noted that the CCCME and the GOC had not submitted any evidence that the intra-Union industry competition was contributing to any harm to the Union industry, or in any event, attenuating the link between the subsidised imports from China and the threat of injury.

(73) Furthermore, the Union industry transitioning from ICEs to BEVs was explained in recitals (1232) to (1234) of this Regulation. In particular, the Commission stated that the transition from ICE vehicles to BEVs formed key background context to the whole threat of injury, causation and Union interest analysis. This transition is ongoing and is planned to continue up to 2035. The transition was a key part of the Commission's Green Deal in order to meet CO_2 emission targets. Union producers have developed detailed strategies, involving the implementation of massive investment plans, in order to comply with the relevant legislation to meet these targets. The transition is therefore essential to the future of the Union industry. Furthermore, the transition of the Union market from ICE vehicles to BEVs is part of the regulatory framework of the auto industry in the Union. The Union vehicles producers must comply with this regulatory framework as well as other legislations. Such regulatory framework cannot be considered to cause threat of injury within the meaning of Article 8(8) of the basic Regulation. On the contrary, it constitutes the framework in which the assessment of the threat of injury within the meaning of Article 8(8) of the basic Regulation is carried out. In fact, the Commission found that the imminent threat to the Union industry was not the transition itself, but the subsidised Chinese imports which threaten the achievement of the transition process.

(74) Concerning point (viii), in recital (1229) of this Regulation the Commission stated that it considered that any increases in cost due to regulatory issues would have affected the Union industry. No evidence was provided that this issue would be a threat of injury to the Union industry in the years following the investigation period. Furthermore, while some Union producers started to invest in production of BEVs before the period considered as explained in recital (996) of the provisional Regulation, the largest investments in the BEV production started to materialise following the publication of Regulation (EU) 2019/631 of the European Parliament and of the Council ([16]), which was later amended by Regulation (EU) 2023/851 of the European Parliament and of the Council ([17]). As showed in Table 1 of the provisional Regulation, at the beginning of the period considered (i.e. 2020) only 5,4 % of the Union passenger vehicles market transitioned to BEVs. The Regulation (EU) 2019/631 demanded the Union passengers car manufacturers to increase the production of BEVs and decrease the production of ICE vehicles to be sold on the Union market. As stated in recital (1229) of this Regulation, whilst the transition to electrification is required by law, this in itself does not pose a threat to the Union industry within the meaning of Article 8(8) of the basic Regulation, as like any industry, the BEV's producers must adapt to the existing regulatory framework. In fact, the regulatory framework constitutes the framework in which the assessment of the threat of injury within the meaning of Article 8(8) of the basic Regulation is carried out. Furthermore, whilst compliance with various regulations continues post-IP, the CCCME and the GOC did not identify any new important regulations that threatens to cause injury to the Union industry within the meaning of Article 8(8) of the basic Regulation. Rather, the Commission established that it is the subsidised imports which threatens the viability of the Union BEVs industry. Without fair market conditions, the Union producers will not be able to reach the necessary economies of scale.

(75) Following definitive disclosure, the CCCME claimed that the Commission did not address the factual bases relied upon by the Commission for dismissing and/or not considering and addressing the two economic analyses prepared by the professors of the Katholieke Universiteit Leuven and the Centre of Economic Policy Research submitted by the CCCME on 20 December 2023 and 19 July 2024.

(76) In recital (1252) of the provisional Regulation the Commission explained that the report submitted on 20 December 2023 concluded that the Chinese BEV imports were indispensable for the Union BEV market, the Union BEV producers and consumers, and the Union as a whole because these imports are necessary to maintain competition and innovation in the Union and accelerate the availability of affordable BEVs for average consumers and to ensure that the Union's climate goals are met. Furthermore, in recital (1253) of the provisional Regulation,

([16]) Regulation (EU) 2019/631 of the European Parliament and of the Council of 17 April 2019 setting CO2 emission performance standards for new passenger cars and for new light commercial vehicles, and repealing Regulations (EC) No 443/2009 and (EU) No 510/2011 (OJ L 111, 25.4.2019, p. 13).

([17]) Regulation (EU) 2023/851 of the European Parliament and of the Council of 19 April 2023 amending Regulation (EU) 2019/631 as regards strengthening the CO_2 emission performance standards for new passenger cars and new light commercial vehicles in line with the Union's increased climate ambition (OJ L 110, 25.4.2023, p. 5).

the Commission stated that regardless of the authoritative and objective value of the report submitted on 20 December 2023, the Commission noted that the purpose of the countervailing duties was not to stop the imports of BEVs from China, but to restore the level playing field on the Union market distorted by the subsidized imports from China at low prices. Therefore, the Commission addressed the core purpose of the report. Furthermore, the complete report was submitted in a sensitive version and only a summary of it was submitted in a non-confidential version. Finally, the report presents the opinion of the two professors and refers to several academic articles and books prepared in the period 1951 – 2020. Neither of these articles or books specifically refer to the BEV industry in the Union and China during the period considered.

(77) The Commission considered that it had sufficiently examined and addressed the arguments contained in those reports, even if in many instances those arguments were not substantiated with any evidence or did not refer to any relevant source. For the sake of clarity, at a more granular level, the report states that the import growth of Chinese BEVs into the Union is not due to alleged subsidies as (a) most imports of BEV into the EU are 'self-imports' by firms active in the EU industry, (b) China has long-standing experience in batteries for consumer electronics, (c) the imports from China reflect the state in technology cycle, (d) the prominence of battery production for success in the BEV industry is temporary.

(78) In Section 3 of the provisional Regulation and Section 3 of this Regulation, the Commission demonstrated that the BEVs from China are subsidised. Concerning point (a) the Commission explained in recital (998) of the provisional Regulation that some of the Union producers were importing BEVs from China. Furthermore, the self-imports as a factor causing a threat of injury to the Union industry was addressed in recital (1213) of the provisional Regulation and recital (1183) of this Regulation. In particular, in recital (1183) of this Regulation, the Commission stated that it performed an analysis of the so-called self-imports in recitals (1212) to (1214) of the provisional Regulation and provided a breakdown of the market share of imports of (i) Chinese exporting producers related to the Union ICE OEMs transitioning to production of BEVs, (ii) Tesla and (iii) all other Chinese imports in Tables 12a and 12b of the provisional Regulation under recitals (1132) and (1134) respectively. The Commission further explained that this analysis should be considered together with the data in Table 13 of this Regulation. Moreover, the Commission stated that the legal standard on causation requires that all imports originating in the country concerned should be assessed collectively. This is in fact what the Commission has done in Section 6.1 of the provisional Regulation. Additionally, the Commission, broke down Chinese imports, using, inter alia, Tables 12a and 12b of the provisional Regulation and Table 13 of this Regulation, in order to determine developments in the profile of Chinese imports. The Commission concluded that imports of Chinese brands were increasing in importance and that sales on the Union market were set to increase, due to the availability of stocks and announcements made concerning the increase of imports on the Union market in the post-IP and beyond in the coming years. This conclusion was also confirmed by the post-IP data that showed that the imports of Chinese brands significantly increased to 14,1 % in the second quarter of 2024, while all the other imports from China decreased as shown in Table 10 of this Regulation. Thus, the Commission properly carried out an analysis of the so-called self-imports and concluded that those imports were not likely to contribute to the threat of material injury.

(79) Concerning point (b), (c) and (d), it is irrelevant that China has long-standing experience in batteries for consumer electronics. As explained in Section 3 of the provisional Regulation and this Regulation the batteries for BEVs have been subsidised by the GOC.

(80) Furthermore, the report states that there was no threat of injury as (a) temporary instances of excess production are a natural occurrence, (b) since BEV capacity is dynamic, it cannot be viewed in isolation from ICE capacity, (c) the presence of considerable market segmentation diminishes any competitive effect, (d) price differences between models are the result of a myriad of factors, but prices of BEV imported from China are not systematically lower than prices of BEV produced in the EU, (e) market penetration of BEV follows predictable patterns of new technologies and ultimately results in Chinese investments in Europe, (f) substantial network effects in charging infrastructure require fast BEV adoption, (g) because of global value chains in NEV components, EU producers gain from a developed Chinese market.

(81) The Commission demonstrated in Section 5 of the provisional Regulation and Section 5 of this Regulation that actually there is a threat of injury. This conclusion was reached by assessing the factors stipulated by Article 8(8), second subparagraph of the basic Regulation as explained in recital (1105) of the basic Regulation.

(82) Furthermore, the Commission addressed the issue of capacity, segmentation, price difference (i.e. undercutting margin) in the provisional Regulation and this Regulation. Furthermore, the Commission does not consider that the high spare capacity in China is temporary, and no evidence was submitted by the CCCME in this regard. Furthermore, the Commission did not see the BEV capacity in isolation from the ICE capacity as explained in recital (1142) of the provisional Regulation. Moreover, the future investments of Chinese exporting producers in the Union is not an aspect that is covered by this investigation as the purpose of this investigation is to level the playing field on the Union market. The Commission also addressed the issue of charging infrastructure in Section 7 of the provision Regulation. Finally, the imposition of the measures will not stop the imports from China either of the BEVs or parts needed by the Union industry.

(83) Finally, the report states that the measures to limit imports of Chinese BEVs would not be in the Union interest as limiting BEV imports (a) foregoes important environmental benefits, (b) implies a reduction in static price competition, (c) implies a reduction in dynamic competition and (d) limits the incentives of firms to innovate.

(84) As explained in recital (81) of this Regulation, the imposition of the countervailing measures will not stop the imports from China. It will only level the playing field on the Union market.

(85) The report of 19 July 2024 commented on the findings of the provisional Regulation. The report quotes three references, i.e. the report of 20 December 2023 and two academic articles prepared in 2016 and 2023 respectively.

(86) The report states that the price gap was overstated and does not imply price undercutting because of (a) differences in observable characteristics, (b) different market segments, (c) brand value for Union firms, (d) value of legacy dealership for Union firms, (e) introductory pricing by new market entrants, (f) differences in production cost, (g) selective sampling.

(87) Point (a), (b), (c), (d) have been addressed in recitals (1022) to (1049) of the provisional Regulation and recitals (748) to (831) of this Regulation. Furthermore, regarding point (e) the fact that new entrants generally enter a market at lower prices than incumbents is irrelevant. The fact of the matter is that the BEVs from China are subsidised and are threating the Union market. Moreover, the fact that the Chinese have a lower production cost is also irrelevant as the lower cost seems to relate to the subsidised received. Finally, there was no selective sampling applied to the Chinese exporting producers and this issue was already addressed repeatedly in the provisional Regulation and this Regulation.

(88) The report also states that the import growth from China is overstated and will not continue to rise. The Commission disagreed this this claim. As it was explained in Table 13 of this Regulation, in the second quarter of 2024 the imports of Chinese brand BEVs already reached 14,1 % market share.

(89) Furthermore, the report states that the overcapacity argument is irrelevant as (a) both Union and Chinese producers have spare capacity, but this does not influence pricing and export decisions, (b) for both Union and Chinese producers medium-term capacity, which combines ICE & BEV, is virtually unlimited relative to the size of the BEV market.

(90) The Commission strongly disagreed that the overcapacity of the Chinese exporting producers is irrelevant. Furthermore, the fact that the Union industry has an alleged overcapacity (a claim that was rejected by the Commission in recital (845) of this Regulation) is irrelevant as the Union industry is not threatening to injure the Chinese domestic industry. The exports of the Union industry to China of BEVs are very low. Furthermore, as the investigation covers only BEVs, the Commission is legally obliged to investigate BEVs and not ICE vehicles. The Commission addressed the production capacity of ICE vehicles in China as an alternative calculation for spare capacity of BEV (see recital (1142) in the provisional Regulation).

(91) Moreover, the report also states that the (a) Chinese exports of BEV are not particularly high, (b) Union producers realize strong export growth, (c) Chinese producers are not targeting export markets.

(92) The Commission disagreed with these claims. Clearly a market share of the Chinese imports in the investigation period of 25,0 % as stated in Table 2a of the provisional Regulation is significant. The exports of the Union industry were addressed in Section 6.2.2 of the provisional Regulation. Furthermore, the fact that the Chinese are targeting export market have also been addressed in recitals (1114) to (1118) of the provisional Regulation and recitals (1031) to (1043) of this Regulation.

(93) The report also states that (a) possible subsidies to Chinese firms should be compared with possible subsidies to Union firms and (b) the subsidies to Chinese BEV producers are likely overestimated.

(94) Point (a) was addressed in recital (1262) of the provisional Regulation. Concerning point (b), the Commission explained in detail in Section 3 of the provisional Regulation and Section 3 of this Regulation how the subsidies were calculated, and the detailed calculations were disclosed to the sampled Chinese exporting producers which had the opportunity to submit comments.

(95) In addition, the report reiterates the arguments on Union interest stated in recital (83) of this Regulation.

(96) The CCCME did not highlight which particular points presented in these reports were not addressed directly or indirectly by the Commission either in the provisional Regulation or this Regulation. Therefore, in view of the explanations provided in recitals (76) to (95) of this Regulation, the Commission considered that the key points of the two reports have been addressed directly or indirectly either in the provisional Regulation and/or this Regulation.

(97) Following definitive disclosure, the CCCME and the GOC also claimed that it was not clear how the Commission calculated the production volume for the investigation period as the data in Prodcom was not reported on a monthly basis. Also the CCCME and the GOC claimed that no details as to the publicly available sources referred to by the Commission have been provided.

(98) This claim was addressed in recital (689) of this Regulation. Furthermore, the Commission could not disclose which Union producer's website it used in this regard as it would disclose which Union producer cooperated in the investigation. Therefore, the claim was rejected.

(99) Following definitive disclosure, the CCCME and the GOC also claimed that throughout the investigation, the Commission has failed to make information provided by interested parties available to other interested parties in a prompt and timely manner.

(100) The Commission disagreed with this claim. Due to the anonymity granted to certain parties, the Commission needed to check carefully the information submitted by parties to make sure that the identity of the Union producers was not inadvertently disclosed. This process was significantly time consuming. Furthermore, by the time the Commission disclosed its findings, the non-confidential file of the investigation was fully updated and the CCCME and the GOC had plenty of time to submit comments. This can also be seen from the significantly large number of comments raised by the CCCME and the GOC following both provisional and definitive disclosures.

(101) Following definitive disclosure, the CCCME and the GOC reiterated the claim that the Commission granted excessive confidentiality to the Union producers. It further claimed that (i) the non-confidential summaries of the post-IP data submitted by the sampled Union producers are not available in the non-confidential file and (ii) instead, a consolidated non-confidential summary of the responses to the post-IP questionnaires was prepared by the Commission.

(102) The post-IP questionnaire did not include a narrative questionnaire like the original questionnaire. Furthermore, in line with the excel tables of the non-confidential reply of the original questionnaire, in order to protect the anonymity of the identity of the sampled Union producers, the Commission decided to include in the non-confidential file of the investigation the non-confidential version of the main information requested in the excel tables of the questionnaire on a consolidated basis (i.e. the data of all sampled Union producers was aggregated) by using indexes.

(103) The CCCME and the GOC further argued that the Commission did not provide sufficient details and sufficiently detailed explanations on key material issues of fact and law concerning the findings of injurious subsidisation and did not respond to the comments of the CCCME or provide reasons for the rejection of arguments raised. According to the CCCME, the following issues were unaddressed or no sufficient evidence or explanations were provided: (i) the reasons for the decision not to include Tesla (Shanghai) in the sample of the Chinese exporting producers and to accept its request for individual examination at a late stage of the proceeding, (ii) the composition of the Union BEV industry, the level of cooperation of the Union industry, what is meant by and the relevance of OEM producers in the context of the Union industry, as well as the degree of transition of the various Union producers from ICEs to BEVs, (iii) the role and relevance of the price undercutting analysis and the assessment of Chinese BEV prices being 30 % below the Union industry's production cost in the determination of price suppression.

(104) The reasons for not including Tesla (Shanghai) in the sample and providing it individual examination is set out in Sections 1.5.3 and 1.6 above.

(105) Points (ii) and (iii) were addressed in recitals (682) and (793) of this Regulation.

(106) Following definitive disclosure, the GOC claimed that the rights of defence of interested parties had been disrespected. In particular, it claimed that the Commission had disregarded arguments and evidence submitted by the GOC and other parties.

(107) The Commission noted that the allegation was not substantiated and constituted a general comment without specific evidence. The Commission reiterated that it had addressed all comments made by the parties. The entire investigation was conducted in full transparency, with all parties having several opportunities to present data, arguments, and evidence throughout the procedure. The Commission requested the necessary data, issued deficiency letters, carried out on-the-spot inspections at more than a hundred of companies and disclosed all relevant calculations. Comments from parties were taken into consideration and allowed the Commission to adjust its findings where duly justified. Therefore, the claim, which was unsubstantiated, general and not in line with the reality of the proceeding, was rejected.

(108) Following additional definitive disclosure, the GOC claimed that there was no evidence of any communication between the Commission and the Union industry in the open file with regard to the Commission's renewed requests for and receipt of the Q1 2024 data. The GOC further argued that it was surprised that the Union industry had the privilege of providing information until the last minute and that their data was accepted at such a late stage in the investigation which was in sharp contrast to the Commission's blunt and unexplained rejection of the GOC's well-substantiated request to schedule the hearing after the submission of the written comments and the strict imposition of the 10-day deadline on the GOC to comment on the 177-page General Disclosure Document, file the hearing presentation and have the hearing. The above facts further substantiate that interested parties on the Chinese side have been illegally and discriminatorily denied a full and proper opportunity to exercise their rights of defence in violation of Articles 12.1, 12.1.2, 12.3 and 12.4.1 of the Agreement on Subsidies and Countervailing Measures.

(109) The respective information was submitted on 29 August 2024 ([18]), namely as soon as all the requested data was available for the Commission. Furthermore, on 9 September 2024 in the non-confidential file of the investigation the Commission updated the Note for the file with the quarterly data for the post-IP ([19]).

(110) Moreover, the Commission was able to accept the missing data from the respective Union producer as the information did not impede the completion of the investigation within the legal deadlines. This was significantly different than agreeing to extend the period to hold the hearings. Moreover, although the GOC complained that the 10 days period for commenting on the General Disclosure Document was not sufficient, the Commission noted that the GOC managed to submit rather extensive comments (the GOC's submission included 151 pages of comments). The GOC failed to show how providing its comments within the requested time period would have prevented it from exercising its right of defence. Therefore, the Commission disagreed that the Chinese interested parties have been illegally and discriminatorily denied a full and proper opportunity to exercise their rights of defence.

2. PRODUCT UNDER INVESTIGATION, PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product under investigation

(111) Following provisional disclosure, the CCCME, the GOC and the Geely Group claimed that the product scope of the investigation was illegally and belatedly extended by including electric vehicles with an internal combustion range extender without giving interested parties notice or opportunity to comment on the intended modification, which affected the due process rights of the interested parties. The CCCME and the GOC further claimed that (i) there was no reference to a range extender in the Notice of Initiation or the Initiation document although there was a clear reference to the charging/recharging of the vehicles in the Initiation document, (ii) the BEVs with a range extender have a drive range comparable to that of an internal combustion engine ('ICE') vehicle while the BEVs without a range extender have a much lower drive range than the ICE vehicles, (iii) the product control number ('PCN') and the product characteristics provided in the questionnaire for the Chinese exporters and the Union industry did not include a reference to the range extender and did not take into account the specific characteristic of these vehicles, (iv) there is no information as to how the Commission obtained or estimated the data for these BEVs as none of the sampled Chinese exporting producers produced and exported these type of BEVs, as neither Prodcom nor S&P Mobility Data provide such information for these type of BEVs. Therefore, the CCCME and the GOC argued that BEVs with range extender should be excluded from the scope of the present investigation because, apart from the extremely limited exports of such vehicles from China to the EU, they are also completely different from standard BEVs in terms of physical and technical characteristics, production costs and prices, and consumer perception and are not in direct competition with standard BEVs.

(112) The Commission noted that while the CCCME and the GOC simply explained these arguments they did not provide any underlying evidence in this regard.

(113) In the Notice of Initiation, the product subject to this investigation was defined as new battery electric vehicles, principally designed for the transport of nine or less persons, including the driver, propelled solely by one or more electric motors. The Notice of Initiation also specified the CN code for the product subject to the investigation which was 8703 80 10. The description of the product subject to the investigation does not need to include all the characteristics of the product subject to the investigation. Furthermore, the Notice of Initiation did not specify that BEVs with a range extender were excluded from the scope of the investigation.

([18]) t24.007656 (confidential file that was visible to the interested parties in the list of confidential documents). The Commission created a non-confidential version of the email showing the receipt of the document t24.007777.

([19]) t24.007652.

(114) As to how the Commission obtained the data, since such BEVs are also imported through the CN code covered by the investigation, the imports of such BEVs from China or other third countries during the period considered, if any, were captured by the data covered by CN Code 8703 80 10. S&P Mobility Data and EEA reported such BEVs and during the IP no such BEVs from China were registered in the Union market. The only evidence in the file shows that after the investigation period the Chinese exporting producer Seres announced such BEVs for the Union market (Seres 7 with range extender ([20])) and an immaterial number of such BEVs were registered after the investigation period.

(115) Moreover, as concerned the Union industry, evidence on the file shows that there were immaterial sales of this product during the period considered.

(116) To be noted that BEVs with a range extender are different than the plug-in electric vehicles ('PHEVs'). In the BEVs with a range extender, the internal combustion engine solely recharges the battery, while in a PHEV, the internal combustion engine powers the wheels on its own. PHEVs are also imported via a different CN code than the CN code covered by the current investigation. Therefore, contrary to BEVs with a range extender, PHEV were indeed not covered by the scope of the investigation.

(117) As concerns the PCN, while indeed the range extender was not specified in the PCN as such, the PCN specified the range of the vehicle, and the purpose of the range extender is to increase the range of the car.

(118) Furthermore, while there were virtually no imports from China of BEVs with range extender during the period considered and virtually no sales by the Union producers on the Union market, it cannot be ruled out that in the future this type of BEV will be exported in significant quantities and produced by the Union producers on the Union market, in view of the fact that BEVs are based on a technology that is continuously evolving. In this respect, the Commission considered that BEVs without range extender and BEVs with a range extender are very similar BEVs, the main small technical difference being the range extender and the related components and thus they are clearly part of the same product covered by the scope of the investigation.

(119) Therefore, the BEVs with range extender are covered by the scope of the investigation.

(120) Furthermore, in the provisional Regulation, the Commission excluded from the scope of the investigation, L6 and L7 categories of vehicles according to Regulation (EU) No 168/2013 of the European Parliament and of the Council ([21]). The Commission hereby clarifies that all L1 to L7 categories of vehicles according to Regulation (EU) No 168/2013 were excluded from the scope of the investigation.

(121) In absence of any other comments with regard to the product under investigation, product concerned and like product, the findings in recitals (184) to (195) are confirmed.

3. SUBSIDISATION

(122) Following provisional disclosure, the BYD Group, the CAAM, the Geely Group, the Dongfeng Group, the GOC, NIO, the SAIC Group, and Tesla (Shanghai) commented on the provisional subsidy findings. Some comments raised by Tesla (Shanghai) were addressed in a separate sending due to their confidential nature.

3.1. Introduction: Presentation of Government plans, projects and other documents

(123) In absence of any comments on the existence of those plans, projects and documents, recitals (196) to (206) of the provisional Regulation were confirmed.

([20]) https://www.electrive.com/2023/09/08/seres-arrives-at-the-iaa-with-two-new-electric-suvs/

([21]) Regulation (EU) No 168/2013 of the European Parliament and of the Council of 15 January 2013 on the approval and market surveillance of two- or three-wheel vehicles and quadricycles (OJ L 60, 2.3.2013, p. 52).

3.2. **Government plans and policies to support the BEV industry**

(124) In absence of any comments on the existing government plans and policies to support the BEV industry, recitals (207) to (253) of the provisional Regulation were confirmed.

3.3. **Partial non-cooperation and use of facts available**

3.3.1. *Application of the provisions of Article 28(1) of the basic Regulation in relation to the GOC*

3.3.1.1. Application of the provisions of Article 28(1) of the basic Regulation in relation to preferential lending

(125) Following provisional disclosure, the GOC objected to the Commission's application of facts available in relation to preferential financing materials arguing that, as the investigating authority, it is the duty of the Commission to investigate and forward the questionnaire to financial institutions requesting for cooperation. The GOC added that facts available could only be applied in the absence of certain 'necessary' information; i.e. information 'required' by an authority to complete its determination(s) ([22]). More specifically, the GOC added that the information concerning the shareholding of the financial institutions is publicly available and that there was no basis for the Commission for the use of facts available.

(126) Furthermore, the GOC added that the Commission had illegally reversed the investigatory burden and referred to Article 12 of the SCM Agreement and related jurisprudence whereby certain obligations are allegedly incumbent upon the investigating authority and cannot be transferred to the 'interested Member' (the GOC) ([23]). Consequently, the GOC considered that the resort to facts available was unlawful as the Commission had not properly notified the respondent of the information required from them. The GOC also commented that an authority cannot force the exporting government (the interested Member) to 'do the work for the investigating authority'.

(127) The GOC noted that there are distinct and non-fungible obligations imposed on the investigating authority and the interested Member. And, as well captured by the Panel in *Mexico – Anti-Dumping Measures on Rice*: '[an] investigating authority is not allowed to rely on the initiative of the interested parties for the fulfilment of obligations which are really its own'.

(128) The Commission, as described in recitals (266) to (268) of the provisional Regulation, noted that the information requested was available to the GOC for all entities where the GOC is the main or major shareholder. Similarly, for non-State-owned financial institutions, the GOC as the regulatory body has the authority to require all financial institutions established in the People's Republic of China to submit information, as well as to instruct financial institutions to disclose information to the public. Subsequently, the Commission highlighted that the GOC cannot evade its responsibilities by withholding information that, by virtue of its authority and regulatory role, is effectively within its possession.

(129) For administrative convenience, with a view to obtaining the information more efficiently, the Commission requested the GOC to forward specific questionnaires to all relevant financial institutions, which it did not do, while the GOC is the authority competent to request answers to the specific questions from the financial institutions that provided financing to the sampled exporting producers. Additionally, it was found unreasonable to argue that it was for the Commission to contact the relevant financial institutions, particularly because the list of relevant financial institutions would only be known to the Commission after receipt of the questionnaire replies of the sampled exporting producers. Moreover, the fact that EXIM bank informed the Commission on its

([22]) Basic Regulation, Article 28(1); SCM Agreement, Article 12.7; Appellate Body Report, Mexico – Anti-Dumping Measures on Rice, para. 291; Appellate Body Report, US – Carbon Steel (India), para. 4.416.

([23]) Panel Report, US –Anti-Dumping and Countervailing Duties (China), para. 15.23.

own initiative and the fact that in previous anti-subsidy investigation questionnaire replies from various financial institutions were received, showed that the GOC was able to forward the questionnaire. The website provided by the GOC containing the shareholding of financial institutions did not contain all the necessary information requested by the Commission in the questionnaire reply in relation to preferential lending. Consequently, the Commission rejected the claim.

(130) In the absence of any other comments, recitals (255) to (273) of the provisional Regulation were confirmed.

3.3.1.2. Application of the provisions of Article 28(1) of the basic Regulation in relation to input materials

(131) Following provisional disclosure the GOC reiterated its claim regarding the Commission's application of facts available in relation to input materials arguing that, as the investigating authority, it is the duty of the Commission to investigate and forward the questionnaire to input suppliers and request them to cooperate. The GOC added that it deemed the information requested and the information SAIC failed to provide as not necessary for the investigation and not required in a regular anti-subsidy investigation, and that the information on suppliers and market conditions could have been obtained from the sampled companies.

(132) The Commission noted that the arguments were addressed in Section 3.3.1.2 of the provisional Regulation. First, the Commission reiterated its stance that it is for the Commission to determine what information is deemed necessary for the investigation and not for a party to make that determination. Furthermore, the Commission highlighted that, contrary to some past investigations ([24]), the GOC did not forward the questionnaire to third parties. CATL was also requested, through the sampled companies to which it was related, to submit a questionnaire and did not do so. In addition, the GOC also has the necessary authority to interact with the input producers, whether they are state-owned or not. In addition, the GOC failed to provide relevant information concerning certain markets such as batteries and lithium. Hence, the Commission had to rely on facts available. With respect to the requested information, it is noted that the Commission only requested information that was necessary to assess the existence and level of subsidisation available to the product concerned. Therefore, the claims were rejected.

(133) Following definitive disclosure, CATL submitted that the Commission could have obtained any information needed on battery purchases from the sampled company groups, and that CATL's non-cooperation could not in any event provide a basis for 'unlimited inferences and conjecture relying on distorted facts'.

(134) The claims raised by CATL were general and unsubstantiated. The Commission highlighted that, as previously covered in recital (810) of the provisional Regulation, although contacted by two of the sampled groups with which it had joint ventures, CATL refused to provide a questionnaire reply so that the Commission did not have crucial information in order to assess the situation of CATL based on its own data. Moreover, facts available on the provision of batteries were also applied to the SAIC Group (recitals (338) and (860) of the provisional Regulation), which is one of the companies with whom CATL has a joint venture with. Therefore, this claim was rejected.

(135) In the absence of any other comments, recitals (274) to (286) of the provisional Regulation were confirmed.

([24]) Commission Implementing Regulation (EU) 2018/1690 of 9 November 2018 imposing definitive countervailing duties on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries and with a load index exceeding 121 originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2018/1579 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China and repealing Implementing Regulation (EU) 2018/163 (OJ L 283, 12.11.2018, p. 1), recitals (46) – (48); Commission Implementing Regulation (EU) 2020/776 of 12 June 2020 imposing definitive countervailing duties on imports of certain woven and/or stitched glass fibre fabrics originating in the People's Republic of China and Egypt and amending Commission Implementing Regulation (EU) 2020/492 imposing definitive anti-dumping duties on imports of certain woven and/or stitched glass fibre fabrics originating in the People's Republic of China and Egypt (OJ L 189, 15.6.2020, p. 1), recitals (110) and (112).

3.3.1.3. Application of the provisions of Article 28(1) of the basic Regulation in relation to the Fiscal Subsidy Policy for the Promotion and Application of New Energy Vehicles

(136) Following provisional disclosure the GOC reiterated its claim regarding the non-existence of information on the preparation, monitoring, and implementation of the scheme, as well as statistics on the vehicles concerned. Consequently, the GOC could not provide information that it did not have, and any use of facts available would be unjustified and illegal.

(137) The Commission noted, as described in recitals (297) and (298) of the provisional Regulation, that information regarding the scheme's preparation, monitoring, and implementation, as well as statistics on vehicles affected by a program that has been in place for several years and has involved significant financial resources from the central budget managed by the GOC, was relevant and necessary for the Commission to reach its conclusion. In the absence of this information, which was not provided by the GOC, the Commission was entitled, where appropriate, to use available facts. Therefore, the claim was rejected.

(138) In absence of any further comments, recitals (287) to (299) of the provisional Regulation were confirmed.

3.3.1.4. Application of the provisions of Article 28(1) of the basic Regulation in relation to the grants/other subsidy programmes including state/regional/local government schemes

(139) In the absence of comments, recitals (300) to (305) of the provisional Regulation were confirmed.

3.3.1.5. Application of the provisions of Article 28(1) of the basic Regulation in relation to the purchase tax exemption scheme

(140) In the absence of comments recitals (306) to (317) of the provisional Regulation were confirmed.

3.3.2. *Application of the provisions of Article 28(1) of the basic Regulation concerning the SAIC Group*

3.3.2.1. SAIC Group's allegation that legal standards for applying Article 28 of the basic Regulation were not fulfilled

(141) Following provisional disclosure, the SAIC Group submitted that in general, the Commission has disregarded the information provided by the entities of the SAIC Group that it considered to be deficient in some respects and used instead, alternative information sources. The SAIC Group considered that the Commission should have undertaken a concrete examination of the deficiencies for each company, assessing the extent of those deficiencies and used the information that it had on record for each company of the group. Furthermore, the SAIC Group argued that under WTO rules, the term 'facts available' should in this context be interpreted as 'best facts available' as the Appellate Body held in US – Hot Rolled Steel, an investigating authority is 'entitled to reject information submitted by interested parties' only where information is not (i) verifiable, (ii) appropriately submitted so that it can be used in the investigation without undue difficulties, (iii) supplied in a timely fashion, and (iv) supplied in a medium or computer language requested by authorities. Investigating authorities must not discard information that is 'not ideal in all respects' if the 'interested party has acted to the best of its ability'. Rather, where an investigating authority is not satisfied with the information submitted by an interested party, the WTO Appellate Body has held that it must examine those elements of the information with which it is not satisfied.

(142) With regard to the alleged 'good faith' showed by the SAIC Group concerning its cooperation with this investigation, the Commission noted that in several instances, which were all duly recorded at the end of each verification visit by both the investigating team and the company representatives, companies belonging to the SAIC Group refused to submit or give access to crucial information to the investigation team although it was readily available and could have been provided, had the SAIC Group acted to the best of its ability. The Commission therefore decided to reject the partial information which was considered deficient or incomplete and could not be fully verified. In line with the conditions set out in Article 28(3) of the basic Regulation this partial information was disregarded on the ground that the SAIC Group did deliberately not act to the best of its ability as shown by the above-mentioned uncontested annexes to the on-spot verification reports listing those documents which the entities, part of the SAIC Group, refused to provide as a whole or for which certain relevant parts were redacted, although readily available. The claim was therefore rejected.

3.3.2.2. Requests for information concerning related suppliers

(143) Following provisional disclosure the SAIC Group claimed that the provisional findings did not reflect the fact that it 'has at all times cooperated in good faith with the investigation and has consistently sought to facilitate the work of the Commission'. Furthermore, the SAIC Group alleged that it could not compel legal entities being part of joint venture structures to cooperate to the investigation.

(144) In this regard, the Commission refers to the two 'Article 28' letters sent to the SAIC Group upon receipt of its questionnaire reply and following the on-the-spot verification, which both listed the numerous areas where the SAIC Group had failed to provide crucial information requested in the framework of this investigation, thereby impeding the investigation. Furthermore, the Commission extensively informed the SAIC Group of the consequences of applying facts available with respect to the SAIC Group, including for the related legal entities being part of the joint venture structures. The Commission reiterated that given the existing links in terms of shareholding and/or the nature of their activities they should have provided a questionnaire reply allowing the Commission to verify the information and eventually request further evidence. In the absence of cooperation by some of the related joint venture legal entities, the Commission was entitled, where appropriate, to use facts available. Therefore, the claim was rejected.

3.3.2.3. Information not provided by the SAIC Group and other undisclosed documents before and during on-spot verification visits

(145) Following provisional disclosure the SAIC Group argued that the Commission should not have applied Article 28 of the basic Regulation to some companies in the SAIC Group and finally to the SAIC Group.

(146) As mentioned in recitals (318) to (371) of the provisional Regulation, the replies received from the different entities part of the SAIC Group were found to be highly deficient. Consequently, the provisional findings of the investigation had to be partly based on facts available, pursuant to Article 28 of the basic Regulation. Indeed, the SAIC Group failed to either disclose the existence of related companies or to provide questionnaire replies for other related companies. Despite possible existing evidence of joint decisions taken by the three shareholders of one company in the SAIC Group, the SAIC Group alleged that one of the three shareholders was not directly related to the SAIC Group, but solely to a foreign company and therefore could not exercise any control or compel this company to provide a questionnaire. This information seemed not to be correct based on publicly available financial reports and could not be verified as the company redacted some parts of the Board of Directors meeting minutes where representatives of its three shareholders could be present.

(147) It remains that despite the requests addressed to the SAIC Group to provide a questionnaire reply regarding several of its related entities, this company chose not to cooperate and therefore exposed its related companies to the use of facts available in compliance with Article 28 of the basic Regulation.

(148) The SAIC Group further argued that the Commission had used information regarding asset-backed securities issued by one related company for which it never requested the SAIC Group to provide a questionnaire reply. Indeed, this entity is one of the new companies mentioned in recital (329) of the provisional Regulation, which according to publicly available sources, were found to be related and were involved in various key contractual relations involving activities such as the provision of input materials, capital, loans, guarantees and other types of financing within the SAIC Group. Since the SAIC Group did not provide any information regarding the existence of this company, the Commission could not have been in the position to request a questionnaire reply. Had this company provided a questionnaire reply, the Commission could have established the existence, activities and precise links between the various related companies. In the absence of such questionnaire reply and relevant information, the Commission had to resort to facts available to establish its findings, which included information relating to the asset-backed securities issued by this company, which were considered a source of preferential financing as explained in recitals (368) and (369). On these grounds, this claim was rejected.

(149) In the absence of any further comments regarding the application of the provisions of Article 28(1) of the basic Regulation concerning the SAIC Group, recitals (318) to (371) of the provisional Regulation were confirmed.

3.3.3. *Application of the provisions of Article 28(1) of the basic Regulation concerning the Geely Group*

(150) Following provisional disclosure, the Geely Group submitted comments concerning the application of facts available.

(151) Firstly, the Geely Group reiterated its claim that its inability to exert control over CATL prevents them from compelling this third party to provide information. It also argued that when an exporting producer and a third party are linked solely through a joint venture, the information from the third party cannot substantiate the use of available facts.

(152) As stated in recital (376) of the provisional Regulation, the Commission noted that the CATL and Geely Group had established a joint venture for the development, production, and sale of battery cells, modules, and packs. Consequently, they were legally acknowledged as business partners. Within the meaning of Article 127 of the Commission Implementing Regulation (EU) 2015/2447 ([25]), they were considered related parties and therefore both parties were requested to submit a subsidy questionnaire response. Consequently, claim was rejected.

(153) Secondly, the Geely Group claimed that the request for information regarding companies within their group participating in BEV financing arrived at an advanced stage of the investigation and lacked specificity.

(154) However, the Commission noted that the questionnaire for exporting producers, available since the initiation of the investigation in October, already included a request for information concerning companies involved in financing activities. Furthermore, the Commission's letter dated 6 March 2024, specifically pointed to entities that may have raised funds through asset-backed securities (including green asset-backed securities), and other means. The Commission also granted a deadline extension for providing such information. Consequently, the claim was rejected.

(155) Thirdly, concerning grants the Geely Group claimed that it provided all available information in the questionnaire response and during on-site verifications. The purpose of grants was indicated on bank slips, which were thoroughly discussed during on-site visits. It also claimed that asset-related grants exclusively cover relevant assets, while non-asset-related grants support daily operations for both BEVs and non-BEVs.

([25]) Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343, 29.12.2015, p. 558).

(156) The Commission noted, as described in recitals (300) and (380) of the provisional Regulation, that based on the limited information available from bank slips, it could not ascertain the underlying subsidy schemes for the grant programs related to the investigated product. Additionally, the GOC did not provide details about ad hoc grants given to the sampled groups. Consequently, the group's claim was rejected.

(157) The Geely Group also claimed to have provided the necessary information at an early stage of the investigation and to have demonstrated full transparency by disclosing and explaining the structure and organization of its operations.

(158) The Commission acknowledged the Geely Group's efforts in responding to its information request. However, the Commission also noted, as described in recital (384) of the provisional Regulation, that the late submission of certain information hindered its ability to verify its completeness and accuracy. In particular, the Commission was unable to validate input supplies relative to the production volume and costs of BEVs since the cost information provided lacked the necessary details requested from producing entities in the questionnaire. Therefore, the claim was rejected.

(159) Concerning land use rights, the Geely Group claimed that its headquarters are unrelated to BEV production and sales, rendering them irrelevant to the investigation. It also claimed to have provided the requested information.

(160) As noted in recital (387) of the provisional Regulation, it was established that the headquarters are partly used for activities related to BEVs. Consequently, the claim was dismissed.

(161) In its comments on provisional disclosure Geely Group reiterated its claim that requests about future projects linked to the production of BEVs exceed the investigation's scope. However, the Commission dismissed this claim as inconsistent, since, at the same time, in one of its submissions a manufacturing entity of the group was requested to be added to the list of Geely Group's producing entities ([26]) after starting the manufacturing and exporting new BEV model after the investigation period as defined in recital (9) of the provisional Regulation.

(162) In the absence of any further comments regarding the application of the provisions of Article 28(1) of the basic Regulation concerning the Geely Group, recitals (372) to (387) of the provisional Regulation were confirmed.

3.3.4. *Application of the provisions of Article 28(1) of the basic Regulation concerning the BYD Group*

(163) Following provisional disclosure, the BYD Group contested the application of Article 28 concerning the lack of a questionnaire reply from its related LFP supplier, Hunan Yuneng New Energy Materials Co. Ltd, based on the fact that this supplier was falling within the definition of a 'related company' to the BYD Group for only part of the investigation period. The BYD Group asked the Commission to include the quantities and prices provided by the supplier at hand in the calculation of the benefit for LFP at less than adequate remuneration. This request was reiterated after definitive disclosure. The BYD Group also reiterated its comments contesting the application of Article 28 to a company of the BYD Group deemed as not being related, adding that the Agreement concluded between the two parties concerned production capacity, and not price-setting, and that purchase prices were determined according to market's demand-supply forces. The BYD Group also submitted a copy of three purchasing orders at different time periods as additional evidence for their claims.

(164) The Commission recalled that the purchase agreements between the BYD Group and Hunan Yuneng New Energy Materials Co., Ltd. submitted by the BYD Group predated the beginning of the investigation period, and that purchases were thus done at prices set when the BYD Group was a related company to its LFP supplier. Concerning the allegations by the BYD Group that the Agreements between the two parties only established production capacity, and not prices, the Commission recalls that, as already covered in recital (892) of the provisional Regulation, they contained provisions relating to price ensuring that it would benefit from the most

([26]) Submission of 26.7.2024, save number t24.006419.

favourable supply; i.e. that it would not pay a higher price than any other customer of Hunan Yuneng New Energy Materials Co. Ltd., as well as a price-setting formula. Concerning the allegations that such transactions were made according to market dynamics, as noted in recital (864) of the provisional Regulation, the Chinese market has been deemed distorted due to the national and sector-specific policies enacted by domestic battery and LFP suppliers, particularly those pertaining to pricing structures. Moreover, given the lack of cooperation from the raw material supplier, the Commission could not assess whether the price at which the BYD Group purchased LFP could be deemed at arms' length and, as explained in recital (928) of the provisional Regulation, the Commission thus replaced this price with the average purchase price of LFP from unrelated suppliers. In light of this, since no verifiable information was provided, the Commission rejected this claim.

(165) In the absence of any further comments regarding the application of the provisions of Article 28(1) of the basic Regulation concerning the BYD Group, recitals (388) to (400) of the provisional Regulation were confirmed.

3.3.5. *Comments submitted by the GOC on the intended application of Article 28 to the sampled exporting producers*

(166) In the absence of comments recitals (401) to (406) of the provisional Regulation were confirmed.

3.4. **Subsidies and subsidy programmes for which the Commission makes findings in the current investigation**

3.4.1. *General*

(167) In the absence of any comments regarding the subsidies and subsidy programmes as presented in Section 3.4 of the provisional Regulation, recital (407) of the provisional Regulation was confirmed.

3.5. **Preferential financing**

3.5.1. *Financial institutions providing preferential financing*

3.5.1.1. State-owned financial institutions acting as public bodies

(168) Following provisional disclosure, the GOC claimed that the Commission was required to analyse the core characteristics, functions, and relationship with the government of each entity ('on its own merit', as it were) and determine whether each entity (individually; not as a group) can be classified as a public body ([27]).

(169) In this regard, it claimed that, except for the EXIM bank, the Commission did not perform such assessment on an individual basis but rather allegedly relied on past investigations and other publicly available documents and relied on a top-level assessment of the EXIM bank and some other banks allegedly involved in providing financing to the BEV industry. It further claimed that the EXIM bank does not perform a 'governmental function' ([28]) and that the GOC does not exercise control over the EXIM bank. On this basis, the GOC concluded that the Commission had not based its conclusions on robust evidence and proper reasoning.

([27]) Appellate Body Report, US – Anti-Dumping and Countervailing Duties (China), para. 317; Appellate Body Report, US – Carbon Steel (India), paras. 4.9 and 4.29; Panel Report, US – Pipes and Tubes (Turkey), para. 7.11., Appellate Body Report, US – Countervailing Measures (China) (Article 21.5), para. 5.96 (referring to Appellate Body Report, US – Carbon Steel (India), para. 4.29), Appellate Body Report, US – Anti-Dumping and Countervailing Duties (China), para. 317., Appellate Body Report, US – Carbon Steel (India), para. 4.29.] Anti-Dumping and Countervailing Duties (China), para. 317., Appellate Body Report, US – Carbon Steel (India), para. 4.29.

([28]) Appellate Body Report, US – Anti-Dumping and Countervailing Duties (China), para. 290; Panel Report, US – Countervailing Measures (China) (Article 21.5 – China), para. 7.19.

(170) The Commission analysed not only the situation of EXIM bank, but also that of all other Chinese State-owned commercial banks ('SOCBs') which provided preferential financing to the BEV sector, and which did not cooperate. In the absence of cooperation by other SOCBs, the Commission had to revert to facts available to make its findings in this regard as concluded in recital (460) of the provisional Regulation. On these grounds, as explained in the recital (464) of the provisional Regulation, the Commission decided to use facts available to determine whether those State-owned financial institutions qualified as public bodies. On this basis, this claim was rejected, and the conclusions drawn in recitals (466) to (467) of the provisional Regulation were confirmed.

(171) First, the Commission determined the ownership of the State in each of the fifteen SOCBs that provided preferential financing to the sampled groups individually, after referring to the existing normative framework in which SOCBs operate in recitals (461) and (462) of the provisional Regulation. Specific examples in this respect were mentioned in recitals (430) and (431) of the provisional Regulation, for those banks which accounted all together for a very large share of the PRC financial sector in terms of assets by the end of 2021/2022. In addition, in recital (463) of the provisional Regulation, the Commission provided evidence of the state ownership for the other SOCBs that provided financing to the BEV sector based on publicly available information, such as recent annual reports.

(172) Following definitive disclosure, the GOC argued that the Commission's determination on (state) shareholding as elaborated in recitals (430) and (431) of the provisional Regulation and recital (170) of this Regulation were not equivalent to an entity-per entity assessment and were not sufficient to conclude that the financial institutions at issue are state-owned. The GOC also claimed that the Commission had allegedly concluded that the GOC did not have shareholding in all financial institutions (SOCBs).

(173) In the absence of new supporting elements contradicting the Commission's conclusion concerning state shareholding, the Commission maintained its conclusion which is based on a thorough analysis of the information on file. The collection of information was however affected by the lack of cooperation by Chinese financial institutions except for the EXIM bank that cooperated only partially so that the Commission had to rely on facts available. Furthermore, the Commission disagreed with the GOC's claim that the Commission had allegedly admitted that the GOC would not have shareholding in all state-owned commercial banks. The GOCs inference is unsupported and goes against the principle that a SOCB is, by essence, state owned.

(174) The Commission then established meaningful control of the GOC over the SOCBs. Evidence was provided of formal indicia of control over the SOCBs via the governance structure of the banks. Indeed, as mentioned in recitals (431) to (432) of the provisional Regulation, since 2017 the Articles of Association of all SOCBs have integrated a clear role for the Chinese Communist Party ('CCP') in the supervision and decision-making process of the financial institutions. Finally, the evidence concerning the meaningful control of the GOC via the regulatory framework was set out in Section 3.5.1.5 in the provisional Regulation. The Commission noted that all SOCBs operate under the same governance structure and regulatory framework as the EXIM bank.

(175) In the absence of reply by the GOC on the governance structure, risk assessment or examples relating to specific loans to the BEV industry, the Commission also had to resort to facts available. Contrary to the GOC's claim, the Commission did not only refer to past investigations but also to thorough reports ([29]) issued during or shortly after the investigation period and confirming the conclusions drawn in previous investigations. In any case, as far as findings of past investigations are concerned, the Commission considered that they were still valid, and that the GOC did not provide any element contradicting such conclusions. On the basis of all these elements, the Commission rejected this claim and confirmed its findings.

([29]) See footnotes 156 and 157 of the provisional Regulation.

(176) Furthermore, as far as the alleged superficial analysis of ownership is concerned, the Commission referred to the information provided by the GOC in the course of the verification visit whereby it was allegedly not in a position to provide information on the shareholder owning close to 90 % of EXIM bank's paid-in capital; i.e. Wutongshu Investment Platform Co., Ltd. According to the Commission's information, based on publicly available information ([30]), such investment platform is owned 100 % by the Chinese authorities through China's State Administration of Foreign Exchange ('SAFE'). In this context, the Commission also had to resort to facts available to establish its findings and 'fill the gaps' left by the lack of cooperation by the GOC. On this basis, this claim was rejected.

(177) Following definitive disclosure, the GOC also claimed that the Commission had not analysed whether the government had delegated governmental authority to the entities at issue and referred to the WTO jurisprudence ([31]). In this respect, the Commission considered that the applicable jurisprudence whereby 'State ownership, while not being a decisive criterion, may serve as evidence indicating, in conjunction with other elements, the delegation of governmental authority.' confirmed that it had acted in line with the applicable legal framework by analysing state ownership and other elements such as formal indicia of control and the regulatory framework.

(178) Following provisional disclosure the GOC also indicated that the ability of a government to nominate or hire officials or staff in an entity is not sufficient to demonstrate control and that it should demonstrate whether these 'nominations' act independently. Furthermore, it added that the Commission's statements that the 'GOC relied on [a] normative framework in order to exercise control in a meaningful way over the conduct of the cooperating State-owned bank whenever it was providing loans to the BEV industry' and the EXIM bank acts in a 'manner prescribed by the GOC' lack supporting evidence.

(179) With regard to the above claims, the Commission referred to recitals (426) and (427) of the provisional Regulation, which provide that 'the State directly nominates the management of EXIM bank. The Board of Supervisors is appointed by the State Council' and that 'the Party Committee of EXIM bank plays a leading and political core role to ensure that policies and major deployment of the Party and the State are implemented by EXIM bank, and that the Party's leadership is integrated into all aspects of corporate governance'. In this strict context, the Commission considered that members of the management and board of supervisors nominated or appointed by the State are directed to perform government action in line with the Party's policies and major developments. Moreover, it should be noted that the Commission did not only rely on the GOC's ability to nominate staff in an entity to demonstrate that the GOC exercised control over the SOCBs.

(180) Following definitive disclosure, the GOC argued that the Commission did not conduct an entity-by-entity assessment with regard to the management of the financial institutions, other than the EXIM bank.

(181) In this regard, the Commission referred to recitals (431) to (433) of the provisional Regulation which do not apply exclusively to the EXIM bank but to all State-owned financial institutions in the PRC. For this reason, such entity-by-entity assessment was not considered necessary. On this basis, this claim was rejected.

(182) Following provisional disclosure, the GOC also added that the Commission cannot rely on Article 34 of the Bank law to conclude that banks are required to act in a certain manner or that the EXIM bank is meaningfully controlled by the GOC and that it should have a more comprehensive reading of the entire Bank Law, and Article 4, 5 and 41 thereof, which prohibits the GOC from exercising any form of control over the decisions of banks and ensures that banks operate independently.

([30]) https://www.caixinglobal.com/2018-12-14/china-sets-up-new-forex-reserve-investment-arm-101358989.html.
([31]) Appellate Body Report, US – Anti-Dumping and Countervailing Duties (China), para. 310.

(183) The GOC also referred to Article 15 of the General Rules on Loans which provides that 'in accordance with the State's policy, relevant departments may subsidize interests on loans, with a view to promoting the growth of certain industries and economic development in some areas' and indicated that such provision did not demonstrate a meaningful control of the government or the exercise of governmental authority.

(184) The GOC also commented that Decision 40 was more of a guidance document and that Article 17 of this Decision 'requires banks to respect credit principles' and that credit support is limited 'only to investment projects pertaining to the encouraged category' whereby the Commission has the legal obligation to prove that 'such bonds' are related to the allegedly encouraged investment projects.

(185) The GOC also referred to the Provisional Measures on Administration of Working Capital Loans as provided in its questionnaire response and pointed to the fact that the relevant acceptance of loan applications, checking, examination and approval do not refer to any requirements on consideration of alleged industrial policies.

(186) The GOC also indicated that the Commission cannot rely on 'overarching goals' of the GOC (citing the Three-Year Action Plan of the CBIRC for the years 2020 to 2022) and is required to show that some concrete action of the government results in its control of the entity (public body) in question and cannot rely on the fact that a financial institution follows or complies with the law of the land as being equivalent to government control.

(187) The GOC also indicated that the Commission reading of the EXIM bank's 2022 annual report was selective and that certain parts were taken out of context and concern considerations of general economic stability of the country disconnected from the advancement of industrial policy whereby the EXIM bank provided financing to various sectors.

(188) As far as the nature and legal effect of Article 4, 5 31, and 41 of the Bank Law, Article 15 of the General Rules on Loans, Article 19 of Decision 40, and the Provisional Measures on Administration of Working Capital Loans, the Commission referred to recitals (449) and (450) of the provisional Regulation where it already addressed these claims. In the absence of new elements, the above claims were rejected.

(189) The GOC also provided that State-ownership does not equate to the concept of 'public body' and that the government's ability to appoint officials needs to be complemented so that these government appointees do not act independently. In this regard, the GOC referred to Article 5 of the 'Interim Regulations of Board of Supervisors of Key State-owned Financial Institutions' and pointed to the fact that the Board of Supervisors 'shall not participate in nor interfere with the business decision-making and business management activities of the state-owned financial institution' to underline that there is no institutional control.

(190) The Commission disagreed with this claim and referred to recital (178) of this Regulation whereby the Commission considered that members of the management and board of supervisors nominated or appointed by the State are directed to perform government action in line with the Party's policies and major developments. On this basis, this claim was rejected.

(191) Following definitive disclosure, the GOC argued that the nomination of the management and board of supervisors of EXIM bank by the State did not imply that these individuals were directed to perform government action in line with the Party's policies and major developments. The GOC also argued that the Commission had ignored evidence on the record allegedly showing that the financial institutions and members of their management are required to act independently. In the same vein, the GOC argued that the evidence on the record showed that by law, the Board of Supervisors shall not interfere with the decision-making of state-owned financial institutions.

(192) In this regard, the Commission referred to recital (178) of this Regulation whereby the Commission considered that members of the management and board of supervisors nominated or appointed by the State are directed to perform government action in line with the Party's policies and major developments. Furthermore, the Commission also considered that supervisors would perform government action in line with the Party's policies and major developments in the framework of their functions and responsibilities. On this basis, these claims were rejected.

(193) Following provisional disclosure, the GOC also provided that the New Energy Vehicle Industry Development Plan 2012-2020 ('the 2012-2020 plan') does not specify any amount of funding that is to be given to the concerned sectors and that it was not operational during the investigation period.

(194) The Commission considered the fact that the plan does not specify any amount of funding irrelevant. The Commission also noted that 2012-2020 plan is the predecessor of the New Energy Vehicle Industry Development Plan (2021-2035), which subsequently followed and that both plans relate to the sector including the product under investigation. In any case, as can be seen from Section 3.2 of the provisional Regulation, the 2012-2020 plan is not the only that foresees preferential financing to encouraged industries such as the BEV industry.

(195) The GOC also indicated that the Commission only pointed to certain elements of the Ministry of Finance Notice on the Commercial banks performance evaluation method, issued on 15 December 2020 and ignored the fact that this Notice also refers to aspects such as: to 'give play to the decisive role of the market mechanism' to support its claim that financial institutions are not required to pay attention to industry policy considerations, to the exclusion of commercial (market-oriented) considerations.

(196) On this basis, the GOC concluded that the Commission had not demonstrated that the 'normative framework did not leave any margin of manoeuvre to the managers and supervisors of the bank as to whether to follow this framework or not with respect to the sampled exporting producers, thus putting the management of that bank in a position of dependence'.

(197) Should the Commission still conclude that the financial institutions are indeed public bodies, the GOC held that the Commission had not established what (if any) governmental function they exercised.

(198) In the same context, the GOC claimed that policy loans do not exist and that there is no interference of the GOC in the process of granting loans whereby banks operate independently and on the basis of market-oriented principles. The GOC also repeated its claims rejecting the Commission's determination that SOCBs are public bodies.

(199) Furthermore, the GOC referred to the Commission's findings that the BEV producers received loans at 'interest rates below or close to the Loan Prime Rate ("LPR")' (see recital (486) of the provisional Regulation) and argued that such rate is actually based on quoting banks based on the actual lending rates implemented for the highest quality customers taking into account the cost of funds, market supply and demand, risk premiums and other factors.

(200) The Commission considered that it had established which governmental functions were exercised by the SOCBs; i.e. provide preferential financing to an encouraged sector; i.e. the BEV sector in line with the applicable national plans as defined in Section 3.2 of the provisional Regulation. Also, in the absence of cooperation by any bank, except for the partial cooperation by the EXIM bank, the Commission was not in a position to verify the claims made by the GOC with regard to important elements such as the assessment of creditworthiness.

(201) On the contrary, as noted in recital (453) of the provisional Regulation, the Commission established that the three sampled groups of exporting producers had benefited from loans at interest rates below or close to the Loan Prime Rate ('LPR'), a rate supposedly available to the highest quality customers, taking into account the cost of funds, market supply and demand, risk premiums and other factors ([32]). The fact that the three sampled producers benefitted from even lower rates than those available to the 'highest quality' customers confirmed that the existence of a normative framework in which financial institutions do not operate independently but are directed to implement national policies by providing preferential financing to the BEV industry as described in recital (455) of the provisional Regulation. On this basis, the above claims were rejected.

(202) Following definitive disclosure, the GOC argued that the Commission had cherry-picked information from various documents to support its view that the GOC had created a normative framework in order to exercise meaningful control over the financial institutions. In addressing the GOC's claim, the GOC argued that the Commission had merely restated the GOC's arguments but ignored the evidence on the record.

(203) The Commission disagreed with this claim. In essence, the Commission considered that it had addressed the GOC's claims and had not 'cherry-picked' information to support its conclusion relating to the normative framework but rather based such conclusion on a thorough analysis of the elements on record which derived from the documents pertaining to the legal framework in which financial institutions operate, national and sectoral policy documents, information collected from the cooperating BEV producers, findings from past investigations and facts available in view of the lack of cooperation by Chinese banks. In the absence of cooperation by the Chinese financial institutions after the GOC did not forward the ad hoc questionnaire to the financial institutions concerned, the Commission was not in a position to confirm the alleged 'evidence on file' submitted by the GOC. On this basis, these claims were rejected.

(204) Following provisional disclosure, the CAAM argued that commercial banks cannot be considered as public institutions, since banks carry out market-oriented operations with the purpose of gaining profits, and that automotive companies carry out financing through these commercial banks in accordance with market mechanisms.

(205) As described in Section 3.5.1.1 of the provisional Regulation, the Commission concluded that State-owned financial institutions are public bodies within the meaning of Article 2(b) read in conjunction with Article 3(1)(a)(i) of the basic Regulation and that they are in any event considered entrusted or directed by the GOC to carry out functions normally vested in the government within the meaning of Article 3(1)(a)(iv) of the basic Regulation. In Section 3.5.1.9 of the provisional Regulation, the Commission concluded that private financial institutions are also entrusted and directed by the government. Furthermore, the findings of this investigation as well as the Commission's findings in previous investigations ([33]) concerning the same financial institutions did not support the claim that banks operate according to market mechanisms and do not take government policy and plans into account when making lending decisions. Therefore, the claim was rejected.

(206) In the absence of further comments, the conclusions drawn in recitals (409) to (467) of the provisional Regulation were confirmed.

([32]) See t24.006247, GOC Comments on provisional disclosure, paragraph 92.

([33]) Commission Implementing Regulation (EU) 2017/969 of 8 June 2017 imposing definitive countervailing duties on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2017/649 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China (OJ L 146, 9.6.2017, p. 17); Implementing Regulation (EU) 2018/1690.

3.5.1.2. Private financial institutions entrusted or directed by the GOC

(207) Following provisional disclosure the GOC submitted that the Commission had relied on the same elements to demonstrate that the financial institutions were entrusted and directed by the GOC and rejected such finding. It referred to WTO jurisprudence to claim that the entrustment/direction and public body analyses differ and that the notion of delegation (in the case of entrustment) or command (in the case of direction) must take the form of an affirmative act ([34]). It also noted that entrustment and direction (i) cannot be a by-product of government regulation; (ii) imply a more active role than mere acts of encouragement; and (iii) need to be demonstrated on the basis of evidence that a government 'gives responsibility' in case of entrustment or 'exercises its authority over a private body to effectuate a financial contribution' in the context of direction ([35]). In this regard, the GOC claimed that the Commission had failed to identify any 'functions normally vested in the government' that the financial institutions are being entrusted/directed to perform. Furthermore, the GOC pointed to the assessment of whether (and how) the GOC '[gave] responsibility to a private body – or exercise[d] its authority over a private body – in order to effectuate a financial contribution' and the absence of 'demonstrable link' between the GOC and the conduct of the private players. The GOC also submitted that the Commission had not performed an entity-by-entity assessment of entrustment/direction for the financial institutions.

(208) In this regard the Commission considered that the elements allowing to conclude that State-owned banks were public bodies also warranted the existence of entrustment and direction at the level of private financial institution. In particular, as explained in recitals (471) to (473) of the provisional Regulation, the Commission established the existence of a normative framework that applied to all financial institutions in the PRC, whether privately or State-owned and resulted in similar conditions. Such findings are also in line with those reached in past investigations.

(209) As far as the entity-by-entity assessment is concerned, the Commission recalled that it did not receive any questionnaire reply by private financial institutions so that it had to rely on facts available.

(210) The GOC also submitted that the fact that similar conditions applied for loan contracts with private financial institutions as with State-owned financial institutions show that the market is competitive and that all banks are subject to the same treatment.

(211) The Commission recalled that in the absence of cooperation from the banks, whether privately or State-owned, the Commission had to rely on facts available. The fact that there was an overlap in rates shows that the private banks also provided loans below market terms, not the opposite.

(212) Following definitive disclosure, the GOC reiterated its claim that the Commission's conclusion relating to similar loan conditions as developed in recital (472) of the provisional Regulation was wrong, as the facts actually demonstrated that China's financial market was fully competitive.

(213) The Commission confirmed its assessment and considered that the existence of similar conditions actually demonstrates that SOCBs and private financial institutions are operating in the same normative framework and are directed and or entrusted to provide preferential financing to the BEV industry, which belongs to an encouraged sector. In any case, in the absence of cooperation by financial institutions except for the EXIM bank that cooperated only partially, the Commission had to rely on facts available, which confirm the Commission's assessment whereas the GOC did not submit supporting evidence pointing to the contrary that could be verified in the framework of this investigation. On this basis, this claim was rejected.

([34]) Panel Report, Korea – Commercial Vessels, para. 7.368 – 7.370.
([35]) Panel Report, US – Countervailing Measures (China), paras. 7.396-7.402.

(214) Following definitive disclosure, the GOC argued that the Commission had failed to meet the legal standard for entrustment/direction, and did not demonstrate that the GOC had given responsibility to private financial institutions, or exercised its authority over private financial institutions, to provide financing to BEV producers. In particular, it argued that the Commission's conclusion on the existence of a normative framework is based on cherry-picked information and not on the entirety of the evidence on record. It also argued that, on top of its public body assessment relying on the nature of an entity and of its relationship with a government, the Commission should also have demonstrated a link between the conduct of the private entity and the government ([36]).

(215) The Commission referred to recital (203) of this Regulation where it already addressed the claim relating to alleged 'cherry-picking' with regard to the normative framework. With regard to the link between the conduct of the private entity and the government, the Commission referred to the existence of a normative framework applicable to SOCBs as described in recital (445) of the provisional Regulation, which also applies to private banks (see recital (208) of this Regulation). Through the existence of such framework, private financial institutions are entrusted or directed to follow a given conduct; i.e. provide preferential financing to the BEV industry. On this basis, these claims were rejected.

(216) In the absence of further comments, the conclusions drawn in recitals (467) to (473) of the provisional Regulation were confirmed.

3.5.1.3. Credit ratings

(217) Following provisional and definitive disclosure, the GOC argued that the information used by the Commission to disregard Chinese credit ratings was outdated and did not take into account recent developments on the Chinese credit rating market. Indeed, China issued new regulations to govern the market, including Administrative Measures for the Credit Rating Business in the Securities Market in 2021. China has also actively opened up its credit ratings market to foreign agencies and provided national treatment in accordance with the current rules and regulations of competent administrative and business management authorities of the credit rating industry. Both S&P Global Ratings Inc. and Fitch Ratings have been operational in China. Therefore, the Commission could not consider the Chinese credit rating market to be closed or distorted.

(218) The Commission does not dispute that certain foreign agencies are operating on the Chinese market. However, the GOC disregarded the evidence provided by the Commission in recitals (474), (475) and (477) of the provisional Regulation, showing that such foreign agencies represent only a tiny fraction of the ratings performed on the Chinese credit rating market, that they follow the same rating scales as the Chinese agencies and that they apply an uplift to their rating in terms of the companies' strategic importance to the GOC and implicit State guarantees.

(219) As to the allegedly outdated nature of the evidence provided by the Commission, the Commission noted that the GOC selectively chose the oldest pieces of evidence submitted by the Commission, and ignored several references from the years 2021-2022 used in recitals (474), (478) and (479) of the provisional Regulation, as well as the reference to the Commission's Staff Working Document on Significant Distortions in the Economy of the People's Republic of China, which was issued in April 2024. These references clearly show that the situation of the Chinese credit rating market had not significantly changed during the Investigation period. These claims were thus rejected.

BYD Group

(220) Following provisional disclosure, the BYD Group submitted that the credit rating assessment analysis carried out by the Commission did not provide evidence on why the BYD Group had been downgraded to a B rating. This claim was reiterated after definitive disclosure.

([36]) Appellate Body Report, US – Countervailing Measures (China) (Article 21.5-China), para. 5.103.

(221) The Commission noted that due to the absence of creditworthiness assessment by Chinese lending financial institutions, as referenced in recital (492) of the provisional Regulation, it undertook an evaluation of the BYD Group's credit rating in recitals (495) to (498) of the provisional Regulation.

(222) As done in previous cases, the Commission downgraded the Chinese AAA rating to a BB rating, taking into account the actual circumstances of each group. However, such rating implies a relative low level of debt. As demonstrated in recital (498) of the provisional Regulation, the BYD Group had a very high debt to equity ratio of 0,78 based on the consolidated accounts of the BYD Group and BYD Finance. As a debt level of almost 80 % cannot be considered as low, the credit rating was further downgraded to B. The calculation of the ratio's mentioned in recitals (495) to (498) of the provisional Regulation were part of the definitive disclosure document.

(223) The GOC also contested BYD's downgrade to B. The claim was rejected because the GOC compared the rating of a particular bond issued by the BYD Group and certain individual companies. The information provided by GOC is not comparable. A particular bond issued by a company does not mean that the rating for that bond also applies to the BYD Group as such. Consequently, the claim was rejected.

(224) Following definitive disclosure, the BYD Group requested to receive the criteria or method classifying the BYD Group as a B rating company by arguing that there must be internationally recognized or generally accepted standard rules to set out the different ratings that are used by the Commission. It also argued that the methodology used by the Commission should have been part of the essential facts which haven't been disclosed.

(225) The Commission noted that there are no specific internationally recognized criteria to establish different ratings. Each rating agency has its own specific methodology, which is not made publicly available. However, rating agencies do follow certain general principles, as highlighted by S&P in their guide on credit rating essentials: 'In forming their opinions of credit risk, rating agencies typically use analysts or mathematical models, or a combination of the two. […] A small number of credit rating agencies focus almost exclusively on quantitative data, which they incorporate into a mathematical model. […] In rating a corporation or municipality, agencies using the analyst driven approach generally assign an analyst, often in conjunction with a team of specialists, to take the lead in evaluating the entity's creditworthiness. Typically, analysts obtain information from published reports, as well as from interviews and discussions with the issuer's management. They use that information and apply their analytical judgment to assess the entity's financial condition, operating performance, policies, and risk management strategies ([37]).'

(226) The same document also highlights that 'the credit analysis of a corporate issuer typically considers many financial and non-financial factors, including key performance indicators, economic, regulatory, and geopolitical influences, management and corporate governance attributes, and competitive position ([38])'.

(227) The Commission used the same principles as those applied by credit rating agencies, as highlighted in the two preceding recitals, to form an opinion on the sampled companies. Indeed, on one hand, the Commission calculated and interpreted a number of financial indicators for each sampled group of companies. As mentioned in recital (222) above, these ratios were part of the definitive disclosure document. On the other hand, the Commission used the entire set of information submitted by the companies during the investigation process, such as financial statements, bond prospectuses, details provided on financing transactions and on the market situation as a whole to make an analytical judgment of the company's specific financial condition, but also of the overall economic, regulatory, and general market conditions in which it operates.

([37]) guide_to_credit_rating_essentials_digital.pdf (spglobal.com), accessed on 10 September 2024, p. 7.
([38]) Idem, p. 10.

(228) In this respect, the Commission thus took into account the context in which the companies operate on top of the specific financial situation of BYD. The Commission noted that the BEV companies operate in a highly capital-intensive and volatile market environment, with rapid technological changes and innovations, with fierce competition between Chinese operators, and where companies have to continuously invest and adapt to changing market circumstances. In short, this is very similar to a start-up environment for new products, which typically involves higher overall risks and thus would yield lower overall credit ratings for companies operating on that market.

(229) Finally, the Commission notes that according to S&P, a B-rating corresponds to a situation where a company is 'More vulnerable to adverse business, financial and economic conditions but currently has the capacity to meet financial commitments ([39])'. In view of the specific financial ratios calculated for BYD, combined with the risks of the market environment in which it operates, the Commission thus maintains its position on the credit rating of BYD. This claim was therefore rejected.

Geely Group

(230) Following provisional disclosure the Geely Group argued that it had been unfairly penalised by the downgrading of its credit rating from a AAA to a B.

(231) The Commission noted, that due to the absence of creditworthiness assessment by Chinese lending financial institutions, as referenced in recital (518) of the provisional Regulation, it undertook an evaluation of the Geely Group's credit rating in recitals (506) to (517) of the provisional Regulation.

(232) The Commission analysed specific short-term liquidity ratios, including the average current ratio, quick ratio, and cash ratio. The assessment indicated that the Group faced short-term liquidity challenges, resulting in a risk debtor profile. Additionally, the Commission analysed long-term debts using ratios such as the Debt-to-Asset ratio and Debt-to-Equity ratio, concluding that the group finances its activity mainly through debt.

(233) Considering the identified short-term liquidity issues and the group's reliance on debt financing, the Commission concluded that the awarded AAA credit rating for the Group was unwarranted, but should rather be a BB.

(234) Furthermore, in recitals (510) to (512) of the provisional Regulation, the Commission identified additional risks associated with the Geely Group. These risks included the issuance of bonds for debt restructuring, the contracting of loans specifically to replace existing ones, and a debt-to-equity swap arrangement.

(235) To account for the heightened risk exposure faced by the banks, particularly due to liquidity issues and both short-term and long-term financing challenges, the Commission downgraded the risk rating by one notch and opted to use B corporate bonds (instead of BB) as the basis for determining the market-based benchmark. On this basis, the claim was rejected.

(236) The GOC also contested the downgrading of the Geely Group to B. The Commission noted that the GOC only provided a web reference with a credit rating in support of this argument, from which it was not possible to ascertain whether it referred to certain individual companies or to the group as a whole. It was also not clear from the information provided what period the rating referred to. Furthermore, the rating given on the website for Geely was BBB- with a negative outlook. This information indicates the distortion of the credit rating in China, where the group was rated AAA, and is not very different from the standard BB used by the Commission. Due to the lack of information and unsubstantiated arguments, the Commission rejected the claim.

([39]) Idem, p. 9.

(237) Following definitive disclosure, the Geely Group argued that the Commission failed to account for the fact that one of the Group's companies, Genius Auto Finance Co. Ltd ('GAF') was awarded AAA credit rating by S&P. The Commission noted that the credit rating, that the Group was referring to, was awarded to the trustee of ABS security, namely Shanghai International Trust Co. Ltd., but not GAF (the service provider of the ABS mortgage loan). The argument was therefore dismissed.

SAIC Group

(238) Following provisional disclosure the SAIC Group argued that it had been unfairly penalised by first, its downgrading from a AAA credit rating to a B credit rating and second, by the application of the spread to the People's Bank of China ('PBOC') Loan Benchmark Rate (or the National Interbank Funding Centre ('NIFC') Loan Prime Rate) at the date the loan was granted and for the duration of each loan in question, rather than to the rate that was applicable the SAIC Group.

(239) In the absence of creditworthiness assessment by the Chinese lending financial institutions, as mentioned in recital (518) of the provisional Regulation, the Commission assessed the credit rating of the SAIC Group in recitals (519) to (527) of the provisional Regulation. In these recitals it first assessed certain ratios pertaining to profitability, average current ratio, quick ratio, cash ratio, Debt-to-Assets, Debt-to-Equity and considered that such ratios did not warrant the alleged AAA rating mentioned in recital (238) of this Regulation and recital (524) of the provisional Regulation, but rather a BB rating. Furthermore, as noted in recitals (522) and (523), certain BEV exporting producers within the SAIC Group had to resort to debt-to-equity swaps or equity injection to ensure the sustainable continuation of their operations. In addition, the Commission had also observed that the group had contracted loans with the specific purpose of replacing existing loans. On this basis, the Commission decided to downgrade the SAIC Group from BB to B to reflect the additional risks related to its financial and liquidity problems.

(240) Furthermore, the Commission did not consider that the SAIC Group had been unfairly penalised. In order to assess the level of the subsidy that it received, the Commission compared the interests to be paid in the investigation period as reported by the SAIC Group with the interest that it should have paid in an undistorted market, had an undistorted credit rating been applied.

(241) In this regard, it used the LPR, i.e. the benchmark rate formed by major Chinese banks quoting the actual lending rates implemented for the highest quality customers, taking into account the cost of funds, market supply and demand, risk premiums and other factors ([40]). Considering that the SAIC Group benefitted from more beneficial rates than the average rate offered to the highest quality customers used for the formation of the LPR, the Commission considered that the basis for an undistorted benchmark should be set, at least, at the level of the LPR. In a second step, in order to reflect the credit worthiness of the SAIC Group, a spread based on the difference between AA and B credit rating was applied as explained in recital (504) of the provision Regulation.

(242) The GOC also contested the downgrading of the SAIC Group to B. The Commission noted that in support of this argument the GOC provided a web reference with a credit rating of a leading Latin American producer of confectionary and cookie products. The Commission failed to see the connection between Argentine chocolates and the Chinese BEV industry. Therefore, the Commission rejected this argument.

(243) On this basis, this claim was rejected. In the absence of any other claim in this respect, the conclusions drawn in recitals (474) to (481) and (491) to (527) of the provisional Regulation were confirmed.

([40]) See t24.006247, GOC Comments on provisional disclosure, paragraph 92.

3.5.2. *Preferential financing: loans*

3.5.2.1. Types of loans

SAIC Group

(a) Loans in foreign currencies

(244) Following provisional disclosure the SAIC Group submitted that the amount of benefit generated by the loans in foreign currency should not have been only allocated on the basis of the export turnover of the product under investigation ('PUI'), but on the total export turnover. Following definitive disclosure, SAIC provided additional arguments, claiming that the Commission had sufficient verified information on record regarding export turnover from sales to the Union and outside the Union. It also noted that loan contracts do not specify the purpose or the use of these loans. Rather, these contracts indicated that they related to working capital only. These loans in foreign currencies should therefore have been treated as the loans in CNY and be allocated on the total turnover of the group.

(245) The Commission accepted the claim regarding the allocation of the benefit amount generated by the loans in foreign currency and revised the calculation accordingly. In the absence of transactions in foreign currencies relating to other elements than sales of finished products, the Commission considered that loans in foreign currencies related exclusively to the export sales activities.

(b) Loans in CNY

(246) Following provisional disclosure the SAIC Group submitted that a number of intercompany loans in CNY should have been removed from the subsidy calculation. Accordingly, the SAIC Group suggested a modified calculation method as regards the subsidy amount.

(247) This claim was partially accepted insofar as supporting evidence was available to the Commission. The supporting evidence regarding the non-current liabilities due within one year of one company in the SAIC Group that was provided by the SAIC Group as part of its comments, also led to the identification of preferential financing in the form of bonds that was previously not known to the Commission. The calculation of the subsidy amount was revised accordingly.

(c) Interbank loans

(248) Following provisional disclosure the SAIC Group submitted that one interbank loan of one company in the SAIC Group was fundamentally different than loans and therefore should not have been treated as such. However, if the Commission would still treat this interbank lending as analogous to a loan, the applicable benchmark interest rate should be the one for short-term loans with a term of three months from December 2022 (i.e. 3,65 %), since the term of interbank lending for auto financing companies was legally capped at three months.

(249) The Commission rejected the SAIC Group's claim and considers that the company's access to interbank lending within the SAIC Group at exceptionally low rates constitutes preferential financing. The Commission therefore considered this interbank lending as analogous to a loan. In the absence of any information provided by the SAIC Group regarding the interbank loan or the potential existence of other similar loans, the Commission continues to rely on facts available to assess the benefit related to these interbank loans.

(250) In the absence of further comments on the types of loans, the conclusions drawn in recitals (482) to (485) of the provisional Regulation were confirmed.

3.5.2.2. Specificity

(251) Following provisional disclosure the GOC claimed that Commission had failed to conduct a proper specificity analysis for the various alleged preferential financing programs showing that there is 'unambiguous' and 'clear' limitation on access to the alleged subsidy in question, a limitation which 'distinctly express[es] all that is meant; leaving nothing merely implied or suggested' ([41]).

(252) The GOC also added that the Commission had consistently failed to specify which part of the documents at issue mandates the explicit granting of preferential financing to the BEVs producers.

(253) The GOC also submitted that the Commission had failed to show any explicit limitation of the alleged preferential lending to certain enterprises or sectors as preferential loans did not target a sufficiently limited group in the sense that the alleged subsidy was not limited to just the BEV industry but to so-called 'encouraged' industries.

(254) As set out in recital (486) of the provisional Regulation, several legal documents, which specifically target companies in the BEV sector, direct the financial institutions to provide loans at preferential rates to the BEV industry. Pursuant to Article 4(2) of the basic Regulation, it is not necessary that the subsidy is limited to just the BEV industry to be considered specific, but it is sufficient that the access to the subsidy is explicitly limited to certain enterprises. The group of encouraged industries is considered to be of an explicit limited nature. Therefore, the claims were rejected.

(255) Following definitive disclosure, the GOC reiterated that the Commission had failed to substantiate its determination relating to specificity based on positive evidence and relied on documents which 'allegedly' demonstrate that the financial institutions 'only provide preferential financing to a limited number of enterprises or industries, which comply with the relevant policies of the GOC'. More specifically, it argued that the encouraged industries, taken as a whole, do not constitute a sufficiently discrete segment of the economy as to constitute 'certain industries' within the meaning of Article 4(2)(a) of the basic Regulation and Article 2(1)(a) of the SCM Agreement. In particular, the GOC argued that the breadth of the so-called 'encouraged' industries results in the alleged subsidies being broadly available throughout China's economy such that it cannot logically be considered to be explicitly specific. The GOC also argued that the Commission had not demonstrated that such specificity was 'unambiguous' and 'clear' ([42]) and that the documents relied on by the Commission (see recital (254) of this Regulation) were either irrelevant to the BEV industry or non-binding.

(256) The Commission considered that the set of documents referred to in recital (486) of the provisional Regulation such as Article 15 of the of the General Rules on Loans (implemented by the People's Bank of China) and and Article 34 of the Bank law constituted positive evidence demonstrating in an unambiguous and clear manner that the provision of preferential financing was specific to the BEV industry. Furthermore, as already explained in recitals (253) and (254) of this Regulation, the Commission considered that the documents relied upon explicitly limited this program to certain enterprises and is not broadly available throughout the Chinese economy. As a matter of fact, the Commission noted that the BEV industry is an encouraged industry and that such status is not generally available in the sense that it is limited to a restricted number of industries which are listed in a designated catalogue, as explained in recital (711) of the provisional Regulation. Furthermore, the BEV industry is also a sector for which dedicated national or subnational multi-annual plans were designed, thereby clearly indicating that it is not any industry but an industry that is entitled to a preferential treatment in the eyes of the GOC and that such status will come together with certain preferential policies as elaborated in the various policy documents mentioned in Section 3.2 of the provisional Regulation. On this basis, these claims were rejected.

([41]) Panel Report, EC and certain member States – Large Civil Aircraft, para. 7.919.
([42]) Panel Report, EC and certain member States – Large Civil Aircraft, para. 7.919.

(257) Following definitive disclosure, the GOC also referred to the fact that the Commission had requested the GOC to forward questionnaires to the relevant financial institutions and claimed that information gathering should be performed by the investigating authority and the burden should not be shifted to the respondent parties. Furthermore, the GOC argued that an undertaking cannot be presumed to have benefitted from an advantage 'solely on the basis of a negative presumption, based on a lack of information enabling the contrary to be found, if there is no other evidence capable of positively establishing the actual existence of such an advantage'.

(258) As explained in recital (129) of this Regulation, the Commission requested the GOC to forward specific questionnaires that the Commission had prepared to all relevant financial institutions for administrative convenience and good administration, with a view to obtaining the information more effectively. Such request can in no case be equivalent to shifting the responsibility of information gathering. By not cooperating, GOC did not allow the Commission to assess additional documents that would have allegedly demonstrated the absence of specificity, *quod non*, so that Commission had to rely on the information on file supporting its conclusions. Such legal reasoning is not equivalent to a negative presumption as the Commission relied on elements on record in view of the GOC's refusal to cooperate which is in contrast with its behaviour in past investigations where financial institutions cooperated and allowed the Commission to proceed with its investigatory work, collect and verify the information that it deemed necessary as far as the BEV industry is concerned and the sampled producers in particular. On this basis, these claims were rejected.

(259) The GOC also argued that the Commission should have assessed the specificity for each of the alleged program or instrument that it countervailed and that the Commission cannot establish that the various forms of financing are specific because the interested parties have not provided evidence to the contrary. It further argued that interested parties showed that that these instruments are available to all entities in all sectors of China's economy.

(260) As showed in the various sections of the provisional Regulation, the Commission did assess specificity for each program that it countervailed on the basis of positive evidence which were not contradicted by any substantiated claims submitted by any party. The claim that interested parties showed that these instruments were available to all entities in all sectors of China's economy was found to be vague and unsubstantiated. On this basis, these claims were rejected. In the absence of further comments regarding specificity, the conclusions drawn in recital (486) of the provisional Regulation were confirmed.

3.5.2.3. Calculation of the subsidy amount

(261) Following provisional and definitive disclosure the GOC claimed that the Commission resorted to an out-of-country benchmark without providing sufficient evidence that the market in China is distorted, and that this distortion renders in-country rates unusable as a benchmark, in line with the applicable WTO jurisprudence ([43]).

(262) The Commission disagreed with this claim and argued that the GOC's claim was vague as it referred to the benchmarks used for preferential financing in general but also referred to credit lines in particular (recital (117) of the provisional Regulation). Furthermore, the Commission pointed out again that the GOC seemed to ignore that the benchmark used for loans in CNY, equity injections, bonds and bank acceptance drafts were based on a Chinese benchmark i.e. the LPR. The only out-of-country part of the benchmark consisted of the credit risk premium added to the LPR. In this context, the Commission provided extensive evidence in Section 3.5.1.10 of the provisional Regulation showing that credit ratings and hence credit risk premiums were distorted in the PRC, thus rendering them unusable to establish a benchmark.

([43]) Appellate Body Report, US – Carbon Steel (India), para. 4.244. and Appellate Body Report, US – Carbon Steel (India), paras. 4.185-4.186, 4.208. See also: Appellate Body Report, US – Softwood Lumber IV, para. 106; Panel Report, US – Anti-Dumping and Countervailing Duties (China), para. 10.187.

(263) As far as the analysis of the existence of distortions in the PRC is concerned, the Commission also referred to recital (471) of the provisional Regulation confirming the existence of a normative framework and recital (473) of the provisional Regulation concluding that all financial institutions (including private financial institutions) operating in China under the supervision of the NFRA were entrusted or directed by the State to pursue governmental policies and provide loans at preferential rates to the BEV industry. In any case, in the absence of full cooperation by any cooperating financial institution, no other benchmark could be established. On this basis, this claim was rejected.

(264) Following definitive disclosure, the GOC also claimed that the Commission had not responded to its comments concerning the choice of a relative spread rather than an absolute spread to establish the difference between AA rated and B rated corporate bonds. According to the comments provided following the provisional disclosure, the GOC argued that the use of a relative spread made no economic sense and that the Commission did not explain how the addition of the relative spread approximates a 'comparable commercial loan which the firm could actually obtain on the market' within the meaning of Article 14(b) of the SCM Agreement; and why the Commission considered that no adjustments were necessary to the benchmark with regard to the addition of the (relative) spread.

(265) The Commission noted first that the GOC only made some general statements on the use of the relative spread at provisional disclosure. It did not provide its rationale for considering the relative spread as economically illogical, the reasons for considering an absolute spread as more appropriate, or the adjustments to the benchmark that it would consider necessary. The GOC also did not provide any evidence to support its statements or to rebut the Commission's position.

(266) Concerning the use of the relative spread as such, the Commission highlighted clearly in recital (490) of the provisional Regulation that it had followed the same calculation methodology for preferential financing through loans established in the anti-subsidy investigation on aluminium converter foil originating in the PRC, as well as the anti-subsidy investigation on hot-rolled flat steel products originating in the PRC, the anti-subsidy investigations on tyres originating in the PRC, certain woven and/or stitched glass fibre fabrics originating in the PRC and optical fibre cables originating in the PRC, and it provided the relevant references to these Regulations, where the rationale of the use of the relevant spread was explained at great length. The application of this calculation methodology for each individual group of sampled companies was further explained in more detail in the specific disclosure of the individual companies. The GOC did not provide any new arguments that would have warranted a change in the Commission's long-standing practice on the use of the relative spread.

(267) However, for the sake of completeness, the Commission reminds the GOC that in principle, the aim of the relative spread was to construct a credit risk premium for each company, to be applied to the risk-free rate in order to arrive at a benchmark interest rate. In this context, it recalls the following observations made in relation to the economic sense of the relative spread, and the fact that it approximates a commercial loan, in recital (256) of the Definitive Regulation of the anti-subsidy investigation on tyres originating in the PRC:

— 'First, while the Commission recognised that commercial banks usually use a mark-up expressed in absolute terms, it observed that this practice seems mainly based on practical considerations, because the interest rate is ultimately an absolute number. The absolute number is however the translation of a risk assessment that is based on a relative evaluation. The risk of default of a BB-rated company is X % more likely than default of the government or a risk-free company. This is a relative evaluation.

— Second, interest rates reflect not only company risk profiles, but also country- and currency specific risks. The relative spread thus captures changes in the underlying market conditions which are not expressed when following the logic of an absolute spread. Often, as in the present case, the country- and currency-specific risk varies over time, and the variations are different for different countries. As a result, the risk-free rates vary significantly over time, and are sometimes lower in the US, sometimes in China. These differences relate to factors such as observed and expected GDP growth, economic sentiment, and inflation levels. Because the risk-free rate varies over time, the same nominal absolute spread can signify a very different assessment of the risk. For example, where the bank estimates the company-specific risk of

default at 10 % higher than the risk-free rate (relative estimation), the resulting absolute spread can be between 0,1 % (at a risk-free rate of 1 %) and 1 % (at a risk-free rate of 10 %). From an investor perspective, the relative spread is hence a better measure as it reflects the magnitude of the yield spread and the way it is affected by the base interest-rate level.

— Third, the relative spread is also country–neutral. For instance, where the risk-free rate in the US is lower than the risk-free rate in China, the method will lead to higher absolute mark-ups. On the other hand, where the risk-free rate in China is lower than in the US the method will lead to lower absolute mark-ups. This is also acknowledged by the Giti Group in table 3 of its submission, where the impact of different PBOC rates is simulated. In practice, when applying the data provided by the Giti Group to the historical PBOC rates, it shows that in some years the relative methodology indeed produces a lower benchmark than the absolute spread.

— On the third point, the Commission interpreted the facts presented by the Giti Group in a different manner. The Giti Group itself noted that the absolute spread is not as stable as alleged, but instead varies over time, from 1 % to 4,5 %. In addition, the relative spread follows exactly the same trend as the absolute spread over the past 23 years, i.e. when the relative spread increases the absolute spread also increases and vice versa. As for the alleged volatility of the relative spread, the magnitude of the changes are similar – the difference between the highest and the lowest figures is 530 % for the relative spread and 450 % for the absolute spread ([44])'.

(268) The GOC did not provide any elements that would warrant a review of these observations, nor did the Commission find any new elements in this investigation that would lead to a change of its previous assessment.

(269) Finally, the GOC's assertion that no adjustments were made to the relative spread is incorrect. Indeed, the Chinese LPR rate is used as a starting point for the calculation. Furthermore, the use of the relative spread captures changes in the underlying country-specific market conditions which are not expressed when following the logic of an absolute spread, as explained in recital (267) above. In addition, recitals (504), (516) and (526) of the provisional Regulation clearly highlight that the relative spread was determined individually for each loan provided to the group of companies, according to the date when the loan was granted and the duration of the loan in question. The specificities of each individual loan were thus also taken into account in the use of the relative spread. The GOC's claims were thus rejected.

(270) Following definitive disclosure, the GOC argued that the Commission confused its obligation to establish the existence of a financial contribution by a government with the existence of a benefit through such financial contribution on the ground that there is a difference between the amount the recipient pays and what would be payable on a comparable commercial loan which the company could obtain on the market.

(271) The Commission considered that it had established the existence of a financial contribution and the existence of a benefit when assessing this scheme. In particular, recital (487) of the provisional Regulation defined the basis on which the BEV producers received a benefit based on the difference between the amount of interest that the company had paid on the preferential loan and the amount that the company would have paid for a comparable commercial loan, which the company could have obtained on the market. As far as the financial contribution is concerned, the Commission considered that the provision of preferential financing through loans or other financial instruments consisted in a financial contribution for the GOC on the grounds that the financial institutions acting as public bodies or being entrusted / directed by the GOC charged a higher interest rate or fee for companies active in a sector other than the BEV sector or another encouraged sector benefitting from a similar favourable treatment. Therefore, the claim was rejected.

([44]) Implementing Regulation (EU) 2018/1690, recital (256) ('Tyres case').

(272) The Geely Group claimed that the Commission should not use corporate bonds data to establish a benchmark for loans, given the significant differences related to associated risks, tradability, repayment periods and conditions (including early repayment options), and debt restructuring. It argued that these differences lead to differences in the interest rates.

(273) The Commission disagreed with the Geely Group's claim on the grounds that it did not use corporate bonds to establish a benchmark for loans. Rather, as explained in recital (526) of the provisional Regulation, the Commission relied on a basket of AA and B corporate bonds to establish the spread to be added to the PBOC Loan Benchmark Rate, or after 20 August 2019, to the Loan Prime Rate as announced by the NIFC, to establish an undistorted market-based interest rate. On this basis, this claim was rejected.

(274) The Geely Group claimed that there were specific errors related to the calculation of loans for certain companies within the group. The Commission acknowledged this claim and subsequently revised the calculation.

(275) In the absence of further comments on the calculation of the subsidy amount, the conclusions drawn in recitals (487) to (490) of the provisional Regulation were confirmed.

3.5.2.4. Conclusion on preferential financing: loans

(276) The conclusions drawn in recitals (528) to (529) of the provisional Regulation were confirmed and the subsidy rates definitively established with regard to the preferential financing through loans during the investigation period for the sampled groups of companies amounted to:

Preferential financing: loans

Company name	Subsidy rate
BYD Group	0,16 %
Geely Group	0,77 %
SAIC Group	0,98 %

3.5.3. *Preferential financing: other types of financing*

3.5.3.1. Credit lines

(a) General

(277) Following provisional disclosure the BYD Group contested the Commission's assessment on credit lines, arguing that both Chinese and international banks that provided credit lines to the companies within the BYD Group (both located in China and outside of China) did not charge opening fees.

(278) However, the evidence submitted by the BYD Group, which consisted of credit line agreements with foreign institutions for companies of the BYD Group located outside of China, demonstrated that either commission fees, arrangement and amendment fees were part of the agreements, or that no commitment fees were charged by the bank as it did not provide commitments to issue financing for the company. Hence, the additional evidence submitted by the BYD Group showed that a commitment fee was normally paid for the commitment of some banks to set aside money for their clients. Therefore, the claim was rejected.

(279) Following definitive disclosure, the BYD Group contested the analysis carried out by the Commission, reiterating that no fees were charged for handling/opening credit lines, and that the Commission focused instead on what related to subsequent banking operations such as loans.

(280) The Commission recalled that first, as explained in recital (530) of the provisional Regulation, the purpose of a credit line is to establish a borrowing limit that the company can use at any time to finance its current operations, via short-term loans, bank acceptance drafts etc., thus making working capital financing flexible and immediately available when needed. As such, loans are indeed one of the banking operations connected with credit lines. Second, the Commission disagreed with the statement that no fees were charged for credit lines, as out of three documents submitted, one clearly mentioned a commission to be paid, another one referred to another credit term agreement, and thus the company did not submit the full documentation, and the third one concerned an uncommitted credit line. Therefore, the Commission rejected these claims.

(281) Following provisional disclosure the Geely Group also claimed that the existence of a credit line was not required when contracting individual loans. In the absence of supporting evidence in this regard, this claim was rejected. In the absence of further comments regarding the general assessment of credit lines, the conclusions drawn in recital (530) of the provisional Regulation were confirmed.

(b) Findings of the investigation

(282) In the absence of comments regarding the findings of the investigation, the conclusions drawn in recitals (531) to (533) of the provisional Regulation were confirmed.

(c) Specificity

(283) Following provisional disclosure the BYD Group stated that credit lines are not specific within the meaning of Article 4(2)(a) of basic Regulation since all enterprises in China, regardless of what their industry type is, are equally eligible for obtaining credit lines, and that Decision No 40 contains no expression of limiting access the credit lines.

(284) The Commission disagreed with the claim of the BYD Group that credit lines are not specific. In this respect, the Commission noted that the BYD Group failed to demonstrate that companies in the PRC can equally benefit from the preferential conditions observed as regards the BEV industry. Moreover, as credit lines are intrinsically linked to other types of preferential lending such as loans and as they are part of the credit support specifically provided to encouraged industries, the specificity analysis for loans developed in Section 3.5.2.2 of the provisional Regulation is also applicable to credit lines. As a result, this claim was rejected.

(285) In the absence of further comments regarding specificity, the conclusions drawn in recitals (534) to (535) of the provisional Regulation were confirmed.

(d) Calculation of the subsidy amount

(286) Following provisional disclosure, the SAIC Group claimed that an alternative benchmark should have been used with respect to the fees applicable to the SAIC Group's credit lines as those mentioned in recital (537) of the provisional Regulation were inappropriate. In SAIC's view, the use of the rates from the UK's Metrobank was not suitable since they were rates applied to credit lines below GBP 60 000, whereas the credit lines of the entities in the SAIC Group were as high as several billion euros and thus not comparable to the loans obtained by the SAIC Group. The Geely Group also claimed that the benchmark used was not appropriate. Following definitive disclosure, the BYD Group submitted that the Commission inappropriately relied on credit lines in GBP issued by a small bank to conclude that the absence of fees charged for opening credit lines by banks in China constituted a subsidy.

(287) The GOC claimed that the out of country benchmark used by the Commission was unreasonably high (1,25 % to 1,75 %) in comparison with other publicly available information (0,25 % to 1 %) ([45]). Following provisional and definitive disclosure, the GOC considered that the selected bank and credit line size (up to GBP 60 000) were problematic. It also argued the companies were not operating in GBP. Following definitive disclosure, the GOC also claimed that Article 14(b) of the SCM Agreement required the investigating authority to adjust the benchmark to approximate the comparable commercial loan of a government ([46]). The GOC also referred to publicly available information ([47]) allegedly showing lower applicable rates, and also a sample of banks which allegedly charge a commitment or arrangement fees usually ranging between 0,25 %-1 %. In addition, the GOC claimed that the benchmark rates used in this investigation were unjustifiably higher than in previous investigations and that the Commission had not explained why such rates were higher than in previous investigations.

(288) The Commission disagreed with the above claims. The underlying information pertaining to the benchmark used in this investigation does not provide for a different fee depending on the value of the credit line. As far as the rates mentioned by the GOC are concerned, they were not supported by original information stemming from specific banks or pointing to certain conditions. Moreover, the benchmark used in this investigation was in line with the benchmarks used in previous investigations for which no superior limit amount had been set and which stemmed from a major international bank ([48]). Therefore, the claims were rejected. The Commission also considered that the benchmark that it used sufficiently reflected the financial conditions on the basis of which a credit line would be granted under normal market conditions in the country where the companies operated. In any case, the GOC did not provide additional information with regard to the adjustments that would have been needed or the specific reasons for performing such adjustment.

(289) As far as the publicly available information is concerned, the Commission considered that the GOC did not clearly point to specific elements on the website to which it referred. In any case, the information contained on the website provided in support of this claim was not considered conclusive as it referred to arrangement/commitment fees of up to 4-5 % and/or referred to a commitment fee applicable during a so-called 'grace period' without providing further information as to what such grace period would correspond to.

(290) The Commission did not consider that the benchmark used was unjustifiably higher. As a matter of fact, it was very close to that used in past investigations and based on publicly available information. The fact that the BEV producers do not operate in GBP was not considered relevant for the appropriateness of the benchmark chosen, where what matters is the market conditions offered to borrow money (regardless of the currency). In any case, considering the LIBOR interest rate applicable in the IP, which was lower than a comparable rate applicable in the PRC, such benchmark was considered conservative. On this basis, such claim was rejected.

([45]) https://corporatefinanceinstitute.com/resources/commercial-lending/commitment-fee/#:~:text=The%20percentage%20fee%20generally%20varies,of%20the%20undisbursed%20loan%20amount.

([46]) Appellate Body Report, US – Anti-Dumping and Countervailing Measures (China), para. 489.

([47]) https://www.ca-cib.fr/sites/default/files/2023-12/China%20tariff%20change%20notification%2025%20December%202023%20%28EN%29.pdf and https://www.citi.com.cn/html/en/pdf/CITI_PricingGuide_SC_v9.pdf.

([48]) Commission Implementing Regulation (EU) 2019/72 of 17 January 2019 imposing a definitive countervailing duty on imports of electric bicycles originating in the People's Republic of China (OJ L 16, 18.1.2019, p. 5), recital (299). Implementing Regulation (EU) 2020/776, recital (354).

(291) The GOC added that the Commission had failed to justify how the selected benchmark approximated a credit line available to leading Chinese car companies and that it is disconnected from prevailing market conditions in the PRC. The GOC also argued that large companies such as the BEV producers could usually negotiate more favourable fees. In the absence of supporting evidence, this claim was rejected.

(292) The GOC also argued that it is common practice in China that banks do not charge for credit lines unless credit is taken up and loans are issued under them. In this respect, it referred to Article 1.1 of the Circular of the China Banking and Insurance Regulatory Commission, the Ministry of Industry and Information Technology, the National Development and Reform Commission, the Ministry of Finance, the People's Bank of China and the State Administration for Market Regulation on Further Regulating Credit and Financing Charges to Reduce Overall Financing Costs for Enterprises whereby '[no fund management fee shall be charged] [for the credit proceeds transferred but not yet used by the enterprise]'. The GOC also referred to answers of Zhihu which states that 'no fees are charged for credit lines'.

(293) The Commission disagreed with such finding and referred to the website of the Bank of China pointing to the charging of fees for the existence of credit lines ([49]) in the investigation period. On this basis, the Commission also rejected the GOC's claim pointing to instructions no to charge fund management fees. In any case, the GOC did not provide evidence that 'fund management fees' correspond to arrangement or renewal fees. Eventually, the claim relating to Zhihu was unsubstantiated and lacked legitimacy. On this basis, this claim was rejected.

(294) In the absence of any other comments, recitals (536) to (538) of the provisional Regulation were confirmed.

3.5.3.2. Bank acceptance drafts

(a) General

(295) Following provisional disclosure the GOC and the Geely Group indicated that bank acceptance drafts are not a form of preferential financing that should be countervailed. They claimed that bank acceptance drafts allow companies to 'buy on credit' from the seller of goods with an attached guarantee. They argued that banks provided a guarantee for the payment of the buyer but no financing. The GOC also argued that, if the Commission were to find that this operation constitute a subsidy, it should calculate the benefit only for the provision of the guarantee as provided for by the conditions of the banks on bank acceptance drafts ([50]).

(296) The GOC also claimed that the Commission relied on findings from past investigations which do not overlap ([51]) and did not establish that bank acceptance drafts in China result in preferential financing to BEV producers and that the Commission ignored that bank acceptance drafts work differently from one country to another.

(297) The Commission disagreed with these claims. It argued that, in the absence of cooperation by Chinese financial institutions, the Commission had to resort to facts available. In this context, it had to rely partly on the uncontested findings from past investigations including those relating to alleged differences between countries. In any case, the Commission also relied on the facts gathered in this investigation where it concluded that the bank acceptance system put in place in the PRC provided all sampled exporting producers a free financing of their current operations, which conferred a countervailable benefit as described in recitals (562) to (566) of the provisional Regulation. On this basis, this claim was rejected.

(298) The GOC also argued that the Commission had failed to take account of the bank acceptance offset system in place with different banks as presented in recital (557) of the provisional Regulation. In the absence of new elements brought forward by the GOC or the sampled exporting producers in this regard, this claim was rejected.

([49]) https://pic.bankofchina.com/bocappd/report/202403/P020240328682010029214.pdf, p. 266.
([50]) https://www.abchina.com/cn/businesses/financing/dsttradefinace/200909/t20090914_787491.htm.
([51]) Appellate Body Report, US – Anti-Dumping and Countervailing Duties (China), para. 354.

(299) After provisional disclosure, the BYD Group argued that no benefits was bestowed from bank acceptances, given the percentage of deposits or equivalent pledges to the banks, and requested the Commission to revise the benefit calculation, arguing that the deposits or pledges provided by the BYD Group to the banks, and interest income deriving therefrom, fully compensated the risks and interest costs borne by the banks, thus not conferring any benefit.

(300) As the Commission concluded in previous investigations ([52]), it should first be noted that it is common practice for banks to request guarantees and collaterals from their clients when granting financing. Furthermore, it should be noted that such guarantees are used to secure that the exporting producer will bear its financial responsibility vis-à-vis the bank, and not vis-à-vis the supplier. The investigation also revealed that these guarantees are not systematically requested by Chinese banks and are not always linked to specific bank acceptance drafts. In this respect, the alleged deposits do not amount to an advanced payment by the drawer to the banks but merely an additional guarantee requested by banks, and which does not have any impact of the bank's decision to issue the bank acceptance drafts with no additional borrowing interests for the drawer. Furthermore, they can take various forms including term deposits and pledges. The deposits may bear interests in favour of the drawer, and therefore, do not represent a cost for the drawer of the bank acceptance draft. Similarly, as described in Section 3.5.3.2 of the provisional Regulation, bank acceptance drafts effectively have the same purpose and effects as short-term working capital loans, as they are used by companies to finance their current operations instead of using short-term working capital loans, and that consequently, they should bear a cost equivalent to a short-term working capital loan financing. On this basis, this claim was rejected.

(301) The SAIC Group claimed that bank acceptances should, in this case, be considered as a payment method as the banks did not provide any financial contribution insofar as the banks merely took on the legal obligations for payment as instructed by the purchasers who, in turn, acted pursuant to the underlying purchase and supply contracts. Furthermore, this method was not specific to the producers of BEVs but also available to any other company in China.

(302) The Commission rejected the SAIC Group's claim that the banks did not provide any financial contribution on the grounds that the banks actually take over the account payables of the SAIC Group and provide for an extended payment term to the SAIC Group without requesting the payment of any form of interest, which would normally be due. In the absence of evidence on the availability of bank acceptance drafts offered at similar conditions to any other party in China, this claim was rejected.

(303) Following definitive disclosure, the Geely group claimed that it never utilized bank's funds during the IP, as it did not have any instances where it failed to pay at maturity. The Commission rejected on this claim on the grounds that benefit is not conferred when companies fail to repay the borrowed funds but rather on the basis of the free short-term loan that it receives through the existence of bank acceptance drafts. On this basis, this claim was rejected.

(304) Following definitive disclosure, the GOC reiterated that the Commission should not have treated bank acceptance drafts similarly to short-term loans as they are different form of financing.

(305) For reasons mentioned in Section 3.5.3.2 of the provisional Regulation, the Commission considered that bank acceptance drafts are equivalent to short term loans and rejected this claim.

(306) In the absence of further comments regarding the general assessment of bank acceptance drafts, the conclusions drawn in recitals (539) to (557) of the provisional Regulation were confirmed.

([52]) See E-bikes case, recital (316), and GFF case, recital (407), both cited respectively in footnotes 12 and 159 of the provisional Regulation.

(b) Specificity

(307) Following provisional disclosure, as far as bank acceptance drafts are concerned, the GOC indicated that the Commission had reversed the burden of proof by claiming that any undertaking in the PRC (other than within encouraged industries) could benefit from bank acceptance drafts under the same preferential terms and conditions.

(308) The GOC argued that the Commission had failed to perform a specificity analysis and that it had relied on its assessment with respect to loans, which is insufficient.

(309) The GOC, the BYD Group and the SAIC Group also submitted that bank acceptances are not specific within the meaning of Article 4 of the basic Regulation and Article 2 of the SCM Agreement, as all Chinese legal entities are entitled to bank acceptances, no limits and restrictions are conferred upon companies on how to utilize them for purposes of commercial transactions, and conditions for applying for bank acceptances are neutral, without circumscribing to a specific type of enterprises/industries. The GOC also indicated that the Commission had reversed the burden of the proof by claiming that there was no evidence that any undertaking in the PRC (other than within encouraged industries) could benefit from bank acceptance drafts under the same preferential terms and conditions.

(310) These claims had to be rejected. The SAIC Group's claim was unsubstantiated. Despite the fact that the BYD submitted the Measures for the Administration of Acceptance, Discount, and Central Bank Discount of Commercial Drafts (Order No 4 [2022] of the People's Bank of China and China Banking and Insurance Regulatory Commission) ([53]) and the Measures for the Implementation of Administration of Negotiable Instruments ([54]) as applicable legislation for bank acceptances, the evidence submitted failed to demonstrate that any undertaking in the PRC (other than within encouraged industries) can benefit from bank acceptance drafts under the same preferential terms and conditions observed as regards the BEV industry. Furthermore, even if a form of financing could be in principle available to companies in other industries, the concrete conditions, under which such financing is offered to companies from a certain industry, such as the financing remuneration and the volume of financing, might make it specific. There was no evidence submitted by any of the interested parties demonstrating that the preferential financing through bank acceptance drafts of companies in the BEV sector is based on objective criteria or conditions in the sense of Article 4(2)(b) of the basic Regulation. As far as the burden of the proof is concerned, the Commission referred to its findings as summarized in recitals (555) and (558) to (560) of the provisional Regulation, which establish that all sampled exporting producers benefitted from a free financing of their current operations and that such benefit is linked to national decisions such as Decision No 40 or the CBIRC notice referred to in recital (560). Furthermore, in the absence of full cooperation by any Chinese financial institution, the Commission resorted to facts available. In this context, the Commission did not consider that it reversed the burden of the proof rather that the GOC and Chinese financial institutions did not submit any elements reversing the findings established by the Commission. On this basis, this claim was rejected.

(311) In the absence of further comments regarding specificity, the conclusions drawn in recitals (558) to (561) of the provisional Regulation were confirmed.

(c) Calculation of the subsidy amount

(312) Following provisional disclosure, the SAIC Group objected to the fact that for several entities, a number of days running after the end of the investigation period have been taken into account in the subsidy calculation. Furthermore, the intercompany bank acceptances granted a financial company in the SAIC Group should have been removed as it was not a recipient of this scheme. As a financial company this entity was giving and not receiving bank acceptances.

([53]) http://www.pbc.gov.cn/en/3688253/3689009/4180845/4821853/2023031716595159517.pdf.
([54]) https://www.gov.cn/gongbao/content/2011/content_1860734.htm.

(313) The Commission noted that certain companies had not provided the information in line with the instructions contained in the questionnaire as bank acceptance drafts that started before the investigation period had not been reported whereby no calculation could be based on such missing drafts. However, in agreement with certain companies and as explained in the specific disclosure, the SAIC Group companies were not requested to re-submit such detailed information due to the burden it would have created but agreed to the fact that the benefit would still be based on bank acceptance drafts still running after the investigation period. For other companies with which no agreement was sought, the Commission applied the same approach based on the information submitted by the companies and considered that using such information was reasonable as it covered a net period of 12 months when bank acceptance drafts were issued. On this basis, this claim was rejected.

(314) As far as intercompany bank acceptance drafts are concerned, the Commission accepted the claims and reflected it in its revised subsidy amount calculation.

(315) The Geely Group claimed that the benefit should be based on the fee for the credit, not on the bank's interest rate and that no benefit should be calculated for bank acceptance drafts covered fully by a cash deposit or bank guarantee and that the fees paid by the Geely group should be deducted from the calculation of the benefit.

(316) The Commission disagreed with the Geely Group's claims. Considering the nature of the bank acceptance drafts which provide for an extended payment term through a free short-term loan, the Commission considered that the benefit should be calculated based on an undistorted benchmark. Furthermore, as established in previous investigations, the fact that the bank acceptance drafts are covered by a cash deposit or guarantee is irrelevant for the calculation of the benefit. The benefit was calculated as the difference between the amount that the company had actually paid as remuneration of the financing by bank acceptance drafts and the amount that it should pay by applying a short-term loan interest rate. Indeed, it is common practice for banks to request various forms of guarantees when providing loans. The existence of a guarantee does not imply that the funds were lent on market terms. Equally, the Commission did not consider that the fee paid upon the issuance of the bank acceptance draft is comparable to the payment of interest. Hence the Commission did not consider that such fee should be deducted. On this basis, these claims were rejected.

(317) Following definitive disclosure, the GOC argued that the benchmark used should have the same structure as the financial contribution being compared in line with Articles 14(b) and (c) of the SCM Agreement. The Commission rejected this claim on the grounds that the benchmark used and the methodology applied correspond to the financial instrument at hand whereby BEV producers, benefitting from bank acceptance drafts, received preferential financing through a free short term loan. Hence, the Commission considered that the use of a short-term interest rate applicable to the duration of the loan was an appropriate basis to calculate the benefit conferred on the recipient. On this basis, this claim was rejected.

(318) In the absence of any other comments, the conclusions set out in recitals (562) to (566) of the provisional Regulation were confirmed.

3.5.3.3. Discounted bills

(a) General

(319) Following provisional disclosure, the GOC argued that the Commission should not rely on past investigations to establish its findings and that the Commission failed to demonstrate that discounted bills are a form of preferential financing.

(320) As described in recitals (567) to (570) of the provisional Regulation, through the use of discounted bills, financial intermediaries advanced amounts of receivables before their due date. The companies at issue received early funds by transferring the rights of future receivables to financial institutions after the deduction of fees and the applicable discount rates. The applicable discount rate was found to be at preferential level. The benefit thus conferred on the recipients is the difference between the discount rate applied by Chinese financial institutions and the discount rate applicable for a comparable operation on the market. In the absence of cooperation by Chinese financial institutions, the Commission confirmed its finding that discounted bills provided financing at a preferential rate. The Commission opposed the claim of the GOC that it bases itself on findings in past investigations. On this basis, this claim was rejected.

(321) The BYD Group submitted that intra-group discounted bills with a specific deposit percentage should have been excluded from the calculation of the benefit, based on the fact that the BYD Group did not transfer the immature receivables to banks, but regained the deposits provided to banks.

(322) The Commission did not accept the claim because the discounted bill transaction is not made between related parties but between the receiver of the bill and a bank. The fact that the original bank acceptance, that afterwards was discounted, was initially issued by a related company is irrelevant and does not alter the fact that the company benefitted from a low discount rate as compared to the discount rate applicable for a comparable operation on the market.

(323) In the absence of further comments regarding the general assessment of discounted bills, the conclusions drawn in recitals (567) to (570) of the provisional Regulation were confirmed.

(b) Specificity

(324) Following provisional disclosure, the GOC and the BYD Group submitted that discounted bills are not specific but available to all sectors. The BYD Group referred to the provisions contained in Article 15 of the Measures for the Administration of Acceptance, Discount, and Central Bank Discount of Commercial Drafts ([55]).

(325) As established in recital (572) of the provisional Regulation, discounted bills, as a form of financing, are part of the preferential financial support system by financial institutions to encouraged industries, such as the BEV industry, and the evidence submitted by the BYD Group failed to demonstrate that any undertaking in the PRC (other than within encouraged industries) can benefit from discounted bills under the same preferential terms and conditions observed as regards the BEV industry. Therefore, the claims were rejected.

(326) In the absence of any other comments related to the specificity, the conclusions set in recitals (571) to (573) of the provisional Regulation are hereby confirmed.

(c) Calculation of the subsidy amount

(327) In the absence of any comments regarding the calculation of the subsidy amount, the conclusions drawn in recitals (574) to (576) of the provisional Regulation were confirmed.

3.5.3.4. Support for capital investment

3.5.3.4.1. Debt-to-equity swap

(a) General

(328) In the absence of any comments regarding the general assessment of debt-to-equity swaps, the conclusions drawn in recitals (577) to (580) of the provisional Regulation were confirmed.

(b) Specificity

(329) In the absence of any comments regarding specificity, the conclusions drawn in recital (581) of the provisional Regulation were confirmed.

(c) Calculation of the benefit

(330) Following provisional disclosure according to the GOC, since the entities involved in a debt-to-equity swap are entitled to shareholder rights, the capital investment should not have been treated as a loan without interest for the benefit calculation.

([55]) See footnote 51.

(331) The Commission considered that the benefit of the debt-to equity swap should be treated from the perspective of the beneficiary of the subsidy, i.e. NHBGAP. However, the shareholder rights taken into account by the GOC concerned the investors, not NHBGAP, and are thus irrelevant to calculate the benefit received by NHBGAP. To the contrary, the Commission noted that the benefit was equivalent to an interest free loan as, from the perspective of NHBGAP, debt with a certain interest rate owed to the debtor was converted into another type of subordinated debt to the same debtor, but with no interest payments involved anymore. This claim was thus rejected.

(332) In the absence of further comments regarding the calculation of the benefit, the conclusions drawn in recitals (582) to (583) of the provisional Regulation were confirmed.

3.5.3.4.2. Capital injections

(a) General

(333) Following provisional disclosure, the GOC argued that the Commission did not analyse whether the various capital injections were more beneficial than a private capital injection.

(334) The Commission disagrees with this assessment. For each of the cases, the Commission explained the beneficial nature of the transaction such as for example in recitals (579) and (582) of the provisional Regulation for the above-mentioned debt-to-equity swap, or in recitals (585) to (587) of the provisional Regulation for the Geely Group capital injection.

(335) In addition, for the capital injection concerning SAIC, the Commission's assessment had to be fully based on facts available, as highlighted in recitals (600) and (605) of the provisional Regulation, and thus the precise underlying conditions of the transaction were not known. On the other hand, based on publicly available information set out in recitals (601) to (606) of the provisional Regulation, the Commission concluded in recital (607) of the provisional Regulation that the participants in the transaction acted as public bodies in line with the applicable legislative framework to provide additional capital to SAIC at no cost.

(336) Finally, the Commission noted that, apart from a general statement, the GOC did not bring any new elements to the file to contradict the findings of the Commission. Therefore, this claim was rejected.

(b) Geely Group

(337) Following provisional disclosure, the Geely Group claimed that the Hubei Jiyuan Yangtze River Industrial Fund Partnership is neither a public body nor vested with governmental authority. Furthermore, due to the transfer of its shares to a private entity in 2024, they argue that the benchmark should be modified.

(338) The Commission noted, as described in recital (590) of the provisional Regulation, that the Yangtze River Industrial Fund – a Chinese Government Guidance Fund since 2017 – focuses on developing strategic emerging industries in Hubei province, including BEVs. The fund aligns with national strategies for modern industrial clusters, emphasizing its role in implementing key government industrial projects in the region. Regarding the claim that the fund transferred its shares to a private entity after the investigation period, it does not contradict the finding that the GOC directly transferred funds to the Geely Group through this fund during the IP. Consequently, the claims were rejected.

(c) SAIC Group

(339) Following provisional disclosure the SAIC Group submitted that the entire benefit amount of equity injection found in recital (598) of the provisional Regulation should not have been allocated on the total PUI turnover. The SAIC Group alleged that the publicly available information the Commission relied on did not clearly indicate what was specifically for BEVs and what was for other purposes or what was not specific to the PUI.

(340) The Commission partially accepted this claim insofar as the publicly available information mentioned in recital (339) of this Regulation indicated that the capital injection was not fully related to BEVs and revised the calculation. In the absence of verified information, which was not provided by the SAIC Group, the Commission was entitled, where appropriate, to use available facts. Therefore, the remainder of the claim was rejected. In the absence of any other comments on the general assessment of debt-to-equity injections, the findings of the investigation, the benefit, specificity, and the calculation of the benefit, the conclusions drawn in recitals (584) to (610) of the provisional Regulation were confirmed.

3.5.4. *Bonds*

3.5.4.1. General comments

(341) Following definitive disclosure, the GOC resubmitted its claims that the questions asked by the Commission on the subject of the green bonds were too broad for the GOC to provide any meaningful information, and that the lack of cooperation of the GOC alleged by the Commission was in fact induced by the Commission itself.

(342) The Commission recalls again, as outlined in recital (270) of the provisional Regulation, that in the course of the investigation, the Commission presented a series of detailed, well-defined, and relevant questions to the GOC in its deficiency letter, additional request for information, and during the verification visit at the premises of the GOC, to which the latter failed to provide the necessary information. Furthermore, in its request for information, the Commission cited several specific official documents pertaining to green bonds and auto finance companies. Since the GOC insists on naming some of these documents, it suffices to say that these documents included e.g. the Guidelines on the Issuance of Green Bonds issued by the NDRC, the Guiding Opinions on Supporting the Development of Green Bonds issued by the CSRC, the Notice on Issuing the Green Bond Endorsed Projects Catalogue (2021 Edition), issued by the PBOC, NDRC, and CSRC, the Environmental Equity Financing Tool published by the PBoC, and the Green Financial Evaluation Programme for Banking Financial Institutions, issued by the PBoC. These are essential documents, which form the basis of the legal and regulatory framework for the issuance of green bonds and green financing in a broader sense. Without these documents, the Commission was clearly missing the basic information to determine whether preferential financing was provided via the issuance of green bonds. However, the GOC did not provide these documents, nor did it explain the legal and regulatory framework, or offered an explanation of what constitutes a green bond despite its mention in official documents. The claim was therefore rejected.

3.5.4.2. Financial institutions acting as public bodies

(343) Following provisional and definitive disclosure, the GOC objected to the references to Article 16 of the PRC's Securities Law. The GOC noted that Article 16 had been altered in 2019. It also stated that Article 12 of the Regulations on the Administration of Corporate Bond, requiring that the purpose of the raised funds needs to comply with the industrial policies of the State, is only a requirement for the issuer of the enterprise bonds, i.e., the enterprises, but not a requirement for the investors. Moreover, it only regulates the usage of the raised capital; it does not require any institutions to invest in the enterprise's bonds.

(344) Furthermore, the GOC once more argued that the BEV industry is not an encouraged industry, that financial institutions are not acting as public bodies and that credit ratings are reliable.

(345) Following provisional disclosure, the GOC also argued that the Commission provided no evidence that 'most of the investors are institutional investors, including financial institutions', apart from a Bloomberg article 'from two years ago'. And in any event, this article would only be capable of showing the composition of Chinese bonds investors in general, not the specific investors of the bonds issued by the sampled exporting producers. Following definitive disclosure, the GOC resubmitted its arguments and insisted that, in any event, a benefit should only be calculated for those specific bonds where the Commission could prove that they were invested by public bodies.

(346) The Commission maintains its position following the provisional disclosure. The Commission acknowledged that Article 16 of the PRC's Securities Law has been amended in 2019. However, the Commission disagrees with the GOC's interpretation of Article 12 of the Regulations on the Administration of Corporate Bond. Indeed, the fact that the issuer of the bond has to comply with the industrial policies of the State in order to be able to have access to the bond market shows that such additional means of financing via the bond market is only available to certain encouraged enterprises and only for those uses encouraged by the State.

(347) This fact, combined with all the other general findings of the Commission concerning preferential financing in this case, which have been extensively described in Section 3.5.1 of the provisional Regulation and confirmed in Section 3.5.1 above, such as the fact that financial institutions are acting as public bodies, and the fact that credit ratings are distorted, have been used together in the Commission's assessment of preferential financing on the bond market.

(348) Furthermore, the Commission noted that the so-called Bloomberg 'article' is in fact a 74-page report from 2022 on the Chinese bond market. Bloomberg's core business being the analysis of data and trends on capital markets, the Commission believes that this study can be considered to be reliable evidence covering the IP. Furthermore, this report corroborates information collected during previous investigations and confirms that the situation had not changed during the investigation period.

(349) To complement, the Commission draws the attention to some further recent reports, which confirm the findings of the Bloomberg report. Indeed, according to information available to the Commission, the investors' structure on the Chinese bond market remains heavily dominated by financial institutions, which are also the underwriters of most bonds ([56]). Banks are also the largest holders of corporate bonds, followed by fund institutions ([57]). In addition, international investors held less than 3 % of the Chinese bond market in 2021 ([58]).

(350) As to the bonds issued by the sampled exporting producers, the Commission found that a certain number of bonds were bonds issued on the interbank market, which per definition, is only open to institutional investors/financial institutions. It should also be recalled that except for EXIM bank, none of the financial institutions cooperated in this investigation.

(351) In addition, the GOC disregards the facts highlighted by the Commission in recital (620) of the provisional Regulation, namely that the bonds issued by the sampled companies bear an interest rate close or below the LPR, meaning that the return of these bonds for the investors is close to or lower than the rate at which the financial institutions can obtain funds themselves from other financial institutions. In other words, these bonds are a loss-making operation for the banks. This clearly shows that the financial institutions are acting as public bodies which are taking into account other considerations than an investor operating in market conditions.

([56]) Shen, W., Conceptualizing the Regulatory Thicket: China's Financial Markets after the Global Financial Crisis, Routledge, London, New York, 2021, p. 74.

([57]) Amstad, M., and He, Zh., Chinese Bond Market and Interbank Market, NBER, Working Paper 25549, February 2019, p. 10; available at https://www.nber.org/system/files/working_papers/w25549/w25549.pdf (accessed on 24 August 2023).

([58]) 9 Things to know about China's Bond Market, Allianz Global Investors, 15 October 2021, p. 3; available at 9-things-to-know-about-chinas-bond-markets.pdf (allianzgi.com) (accessed on 24 August 2023). Original source: CEIC, Wind, Citi Research.

(352) The GOC also disregards the specific evidence provided for the green bonds in recital (617) of the provisional Regulation, where the Commission noted that in line with the 'Green Financial Evaluation Programme for Banking Financial Institutions' of the PBOC, Chinese banks need to subscribe to green debt instruments in order to reach a given threshold in their financial asset base that will contribute to a positive assessment of their performance by the bank regulating authority. In addition, according to the PBOC's 'Monetary policy tool to support carbon emission reduction projects', financial institutions have to provide financing in support of green industrial activities to companies at preferential interest rates close to the level of the country's loan prime rate. In return, the PBOC proposes preferential refinancing rates to the banks for the green funds disbursed. Clearly again, this highlights that the financial institutions were acting as public bodies with reference to the green bonds issued by the sampled companies.

(353) Finally, the GOC did not provide any evidence to substantiate its allegations that investors on the Chinese bond market are not mainly financial institutions.

(354) Therefore, the Commission confirmed its conclusion that there is a significant overlap between the creditors providing capital on the bond market and those providing capital in the form of loans, and that as such, bonds are to a certain extent just another means to provide corporate loans. Thus, the Commission rejected these claims.

(355) In the absence of any comments regarding the legal basis and the finding that financial institutions act as public bodies, the conclusions drawn in recitals (611) to (630) of the provisional Regulation were confirmed.

3.5.4.3. Specificity

(356) As far as bonds are concerned, the GOC noted that the so-called 'green debt instruments' were available to a number of industries. It also argued that these bonds could not be considered specific or limited to a number of industries because 'the bonds cannot be issued without approval from government authorities'.

(357) More generally, the GOC argued that Decision 40 on encouraged industries does not apply to bonds, as the word 'credit' in this Decision only refers to loans in a narrow sense. Following definitive disclosure, the GOC provided additional Chinese documents, where the term 'credit' was used alongside the term 'bonds'. The GOC also claimed that the key laws and regulations which the Commission relied on to support its conclusion in Section 3.5.1 of the provisional Regulation apply to loans only but not to bonds. Additionally, the Geely Group claimed following the provisional disclosure that the Commission had failed to provide sufficient clarification regarding specificity.

(358) On the subject of the green bonds, the Commission highlighted in recital (632) of the provisional Regulation that such bonds are specific as they can only be issued by companies active in certain industrial activities listed in the catalogue of green industrial activities. The fact that this catalogue includes more than one industry is irrelevant in this respect and does not contradict the Commission's conclusion.

(359) The Commission confirmed also its disagreement with the GOC's narrow interpretation of the word 'credit' in Decision 40and continues to interpret this term rather as 'financing' in a broader sense. The GOC did not rebut the Commission's observation in the definitive disclosure, namely the fact that Article 12 of the Regulations on the Administration of Corporate Bond makes the link with the industrial policies of the State, which are guided by Decision 40. Furthermore, the GOC chose to focus exclusively on Decision 40, and disregarded the additional evidence on specificity provided by the Commission in Section 3.5.1.5 of the provisional Regulation. For example, recital (435) of the provisional Regulation referred to the Energy-saving and New Energy Vehicle Industry Development Plan (2012-2020) which provides for 'policy incentives through financial service support', and which is clearly specific to the industrial sector at hand. Yet another example was cited in recital (444) of the provisional Regulation, where the Commission noted that the performance evaluation criteria of the NFRA for commercial banks take into account how financial institutions 'serve the national development objectives and the real economy', and in particular how they 'serve strategic and emerging industries'.

(360) These claims were thus rejected.

(361) In the absence of any comments regarding specificity, the conclusions drawn in recitals (631) to (632) of the provisional Regulation were confirmed.

3.5.4.4. Calculation of the subsidy amount

(362) Following provisional disclosure, the SAIC Group alleged that not all bonds issued by some of the entities should be considered as 'Green Bonds'. Indeed, according to China's Green Bond Principles of July 2022 there are four core components related to green bonds as follows:

— limitation of the utilization of the Green Bonds proceeds in green industries, green economic activities and other related green projects;

— the issuer is required to communicate the specific information of the green projects, including the evaluation and selection process, to investors. Furthermore, engagement of an independent third-party evaluation and certification agency is encouraged;

— the proceeds of Green Bonds should be managed specifically to ensure that the proceeds are used in strict accordance with the purpose stipulated in the issuance documents;

— and disclosure requirements are required on the issuer.

(363) According to the SAIC Group, these four components drew a clear line between green bonds and corporate bonds in China, which is reflected in the disclosure documents of green bonds and which are generally available in the public domain, e.g. the websites of security exchange markets or regulators. However, whilst green bonds generally bear the 'green' label in their names non-green bonds are not allowed to have the green labels because they cannot meet the Green Bonds issuance requirements set by the People's Bank of China. This means that not all bonds could be treated as green bonds by the Commission simply because the activities to which they were related appeared into the Green Bonds Supporting Project Catalogue (2021 Edition) mentioned in recital (263) of the provisional Regulation. Furthermore, for those bonds that were not green, the Commission should have allocated the amount of benefit on the total turnover of the company, rather than the PUI turnover.

(364) The Commission did not dispute the fact that not all of the bonds in the SAIC Group were green bonds. However, the Commission would like to highlight that the use of the turnover of the PUI for the calculation of the benefit on bonds was not necessarily based on the qualification of a bond as 'green bond'. Normal Bonds, when destined to all purposes were allocated on total turnover. Corporate bonds were also considered to be related to the PUI if a link was made in the issuance documents to areas which are specific to BEVs, such as for example financing of R & D for new technologies, which are more likely to benefit electric vehicles than combustion engines. When bonds were destined to BEVs, those bonds were allocated on BEV turnover. All green bonds were allocated to BEV turnover. The Commission also would like to recall that the vast majority of the benefit amount related to bonds concerned various financial companies in the group which had never provided a questionnaire reply, such as SFMH, VW Finance and GMAC. In the absence of verified information, which was not provided by the SAIC Group, the Commission used facts available. In particular, the calculation of the subsidy amount was based on the information regarding the amounts, start and end dates and interest rates of the bonds, found either in publicly available financial statements or in information issued to investors on stock exchanges. In some instances, they were classified as green bonds. Therefore, the claim was rejected.

(365) As mentioned in recital (147) of this Regulation, the SAIC Group argued that Article 28 should not have been applied to attribute all the asset-backed securities ('ABS') issued by one non-cooperating entity to one of the producers and finally to the entire SAIC Group. First, the SAIC Group claimed that the entity in question was never required to provide a questionnaire reply. Second, the SAIC Group argued that it had no meaningful control over this entity, as it was part of a joint venture agreement. Third, if the Commission insisted on such attribution, it should have calculated which proportion of the benefit was attributable to this producer.

(366) On the first argument, the Commission noted that all related companies providing financing to or on behalf of the producers should respond to Sections A and E of the questionnaire. The entity in question never provided a questionnaire reply, even though it clearly was involved in financing services on behalf of one of the producers, and the existence of such services only became apparent quite late in the procedure, just before the publication of the provisional Regulation.

(367) On the second point, the related entity in question was fully owned by the joint venture partner of the SAIC Group and provided financial services for one of the producers in the SAIC Group, co-owned by SAIC and the joint venture partner. As such, there was no doubt to the Commission that this concerned a related entity which should have provided a questionnaire reply.

(368) On the third point, in the absence of verified information, which was not provided by the SAIC Group, the Commission was entitled, where appropriate, to use available facts. According to the information at hand, the entity in question provided financial services for one of the producers in the SAIC Group, and other activities could not be determined. Therefore, the claim was rejected.

(369) Following definitive disclosure, the SAIC Group resubmitted its comments concerning the non-cooperating entity which had issued ABS. The company claimed that the attribution of the ABS to the entity that provided financial services for one of the producers in the SAIC Group's was not in line with the Commission's practice. The SAIC Group specified that the Commission should rely on the shareholding percentage of the exporting producer in the recipient company, and that in line with WTO jurisprudence, the application of Article 28 is strictly limited to the missing information. i.e. in this case the amount of benefit and should not be extended any further than this. Indeed, in the case at hand, the shareholding structure of the recipient company was publicly available, and its relationship with the Group was clearly outlined in SAIC Group's submissions.

(370) SAIC group also stated that the 'other activities' of the recipient company were clear and available to the Commission and that the Commission's attribution to a single producing entity in the Group would lead to double counting under certain circumstances.

(371) The Commission disagrees with these claims. First, the Commission was missing information not only in relation to the amount of the benefit, but also with regard to which entity(ies) of the group this benefit should be attributed. The fact that the non-cooperating company was the first, direct recipient within the group of the preferential financing provided by external parties does not mean that it was also the only beneficiary within the group of this preferential financing. Therefore, the application of Article 28 for the determination of the attribution of the benefit was necessary.

(372) Second, contrary to what was stated by the SAIC Group, this attribution was performed in line with the Commission's past practice. Indeed, the example from past practice cited by the SAIC Group concerned a holding entity that provided financial services to its subsidiaries, which included the exporting producers. It was decided based on the factual situation in that specific case that the proportion of investment of the holding entity in its subsidiaries (which is linked to the amount of equity and thus shareholding in each subsidiary) was a reasonable proxy for the proportion of preferential financing benefiting each subsidiary, and thus an appropriate allocation key for the attribution of the benefit to the exporting producers. In the present case however, the non-cooperating company of the SAIC Group has no known subsidiaries. To the Commission's knowledge, there is also no link between the formal organisational structure of the two joint venture partners and the actual proportion of financial services provided by the non-cooperating company to the various entities within the group.

(373) Third, as highlighted in recital (368) above, since the non-cooperating company had not provided a questionnaire reply, it was not possible to determine the exact scope and structure of its financial activities. There is also no link as such between the owner of the collateral underlying the ABS issued, and the actual beneficiary of the funds raised via the ABS. Therefore, the Commission rejected these claims.

(374) Following provisional disclosure, the Geely Group claimed that the producers did not benefit from ABS since the transactions remained between the financing entity and the retail borrower.

(375) The Commission noted that, under these operations, the Geely Group benefited from preferential financing. As described in recital (619) of the provisional Regulation, ABS enabled the Group to substitute mid-term receivables on car loans with liquidities that were immediately accessible, thereby facilitating pre-financing of their loan operations on a highly advantageous basis. The benefits were allocated accordingly. The claim was therefore rejected.

(376) The Geely Group objected the use of the same benchmark for bonds as the one applied to loans since bonds and loans are different financial instruments.

(377) In this respect, the Commission pointed out that loans and bonds are similar financial debt instruments. In fact, a bond is a kind of a loan used by large entities to raise capital. Both loans and bonds are contracted/issued for a certain period of time and bear an interest/coupon rate. The fact that the financing through a loan is provided by a financial institution and that the financing through a corporate bond is provided by investors, which in most cases are also financial institutions, is irrelevant for the determination of the core characteristics of both instruments. Indeed, both instruments serve to finance business operations, bear the same kind of remuneration and have similar repayment term and conditions. Moreover, no alternative benchmarks were proposed, and no further publicly available information could be identified to provide a more accurate benchmark. Consequently, the claim was rejected.

(378) In the absence of any other comments, the conclusions in recitals (633) to (635) of the provisional Regulation are hereby confirmed.

3.5.4.5. Conclusion on preferential financing: other types of financing

(379) In the absence of any comments regarding the conclusion on other types of financing, the conclusions drawn in recitals (636) to (637) of the provisional Regulation were confirmed.

(380) The subsidy rate established with regard to the other types of preferential financing during the investigation period for the sampled groups of companies amounted to:

Preferential financing: other types of financing

Company name	Subsidy rate
BYD Group	3,60 %
Geely Group	3,23 %
SAIC Group	7,56 %

3.6. **Grant Programmes**

3.6.1. *Direct cash grants*

(a) General comments

(381) Following provisional disclosure, the GOC and SAIC Group claimed that specificity for grants received by Geely and SAIC lacked a case-by-case determination based on positive evidence. Similarly, the Geely Group claimed that the grants should have been allocated to total turnover (BEV and non-BEV), to correctly reflect that the grants related to the overall activities of receiving entities.

(382) The GOC claimed that the Commission used facts available in a punitive manner when assessing grants received by Geely and SAIC and that the Commission gave unclear instructions which hindered a proper assessment by the sampled companies. According to the GOC, the Commission did not conduct a detailed assessment of all evidence on the record to select the most appropriate replacement facts and alleged subsidies should not be attributed to exporters who did not benefit.

(383) As detailed in recital (364) of the provisional Regulation, the SAIC Group claimed that it was not essential to use 'the individual amounts received per grant, time of receipt of the grants, description of the grants, corresponding government notifications specifying the nature of the grants and other necessary information' and refused to provide such information so that the Commission was unable to determine the underlying subsidy schemes, the amount of grants received during the investigation period, as well as whether these grants related to fixed assets or not. Similarly, as explained in recital (372) of the provisional Regulation, none of the Geely Group companies provided complete information regarding the nature of the grant programmes under which they received support, as requested in the questionnaire so that the Commission was not in a position to determine the underlying subsidy schemes for the grant programmes in relation to the product under investigation.

(384) Furthermore, as explained in Section 3.3.1.4 of the provisional Regulation, the GOC failed to provide any information in relation to the grants that were disbursed to the sampled groups so that the Commission could not fill the gaps with information that it would have obtained from another source. On the contrary, the Commission noted that the BYD Group provided the requested relevant information so that the Commission could assess the various aspects of the grants received and consider whether they were countervailable.

(385) On this basis and in the absence of verified information pointing to the contrary, the Commission based its findings on facts available and considered that all grants received by these groups were specific and related to the product under investigation. On this basis, these claims were rejected.

(386) Following definitive disclosure, the GOC reiterated that the Commission's determination that the countervailed grants were specific is based on assumptions, and not on positive evidence, contrary to Article 2.4 of the SCM Agreement. It argued that the Commission had evidence that the alleged grants in question benefitted multiple products and thus applied facts available in a punitive manner. The Commission instead assumed that the grants received by those exporting producers were specific since the SAIC Group and the Geely Group did not provide the Commission with what it considered to be sufficient information. Further, the GOC argued that the Commission has failed to disclose sufficient facts underlying its determination that the grants were specific.

(387) The SAIC Group also argued that it provided evidence to the Commission that the grants received from the GOC were intended for purposes beyond the product concerned and that the information in the Commission's possession, including materials submitted by the SAIC Group and publicly available information, strongly indicates that the grants received were intended for BEVs and non-BEVs. Therefore, it cannot be argued that the Commission's allocation of the grants received to the turnover of the product concerned has any factual foundation. Moreover, the SAIC Group argued that the Commission did not provide any evaluation or reasoning regarding the multiple facts on record – specifically, the audit reports, trial balance, and screenshots of accounts recording the grants – which suggest that the grants received were not solely for the product under investigation.

(388) The Commission restated that the SAIC Group failed to provide complete information regarding the nature of the grant programmes under which they received support, as requested, so that the Commission was not in a position to determine which grant programmes related to the product under investigation. The Commission noted that the information was readily available to the companies but that they refused full access to it. The fact that a company would allow the Commission to view certain documents and provide screenshots without providing the relevant requested information can, in no case, be equivalent to the provision of the requested information in the form of an exhibit ensuring that the information has been duly verified. Neither does such information provide assurance that grants received prior to the investigation period did not benefit the production of BEVs during the investigation period. The Commission also repeatedly highlighted that information provided only in the form of screenshots including limited data or showing some examples would make the verification and reconciliation of essential figures unattainable.

(389) In the absence of verified information pointing to the contrary, the Commission based its findings on facts available and considered that all grants received by these groups were specific and related to the product under investigation. On this basis, these claims were rejected.

(b) Calculation of the subsidy amount

(390) Following provisional disclosure the SAIC Group argued that since the grants received were subject to corporate income tax, the taxable amount should be deducted from the total amount of grants received. The Commission considered that the SAIC Group had failed to provide positive evidence that the tax paid was directly linked to the grants received. Furthermore, Articles 6 and 7 of the basic Regulation do not provide for the deduction of corporate income tax as far as the calculation of the benefit or countervailable subsidy is concerned. Hence, this argument was rejected.

(391) The subsidy rate of the SAIC Group and the Geely Group regarding grants was updated as a consequence of the correction described in recitals (652) and (654) of this Regulation respectively.

(392) As a consequence, the methodology for determining the subsidy amount as described in recital (650) of the provisional Regulation is confirmed and was applied to the exporting producer granted individual examination.

(393) Following definitive disclosure, Tesla Shanghai submitted that there were three payouts for one of the grants the company received, and one of these payouts occurred during the investigation period. The company submitted that, since the amount received during the investigation period concerns a grant related to fixed assets, whose payouts were made under the same scheme, the Commission should have depreciated the amount received by the company during the investigation period.

(394) The Commission acknowledges that, based on the Guidelines for the Calculation of the Amount of Subsidy in Countervailing Duty Investigations ([59]), '[f]or non-recurring subsidies, which can be linked to the acquisition of fixed assets, the total value of the subsidy has to be spread over the normal life of the assets (Article 7(3) of Council Regulation (EC) No 2026/97 ([60]))'. However, the guidelines also provide that 'As an exception to [the point above], non-recurring subsidies which amount to less than 1 % ad valorem will normally be expensed, even if they are linked to the purchase of fixed assets'. Given that the payout for the grant in question amounted to less than 1 % ad valorem, the Commission considered that the payment received during the investigation period was not significant and that it was reasonable to allocate it only to the investigation period. This allocation method is fully in line with the WTO report from the informal group of experts which provides that grants for which the purpose is for the purchase of fixed assets should be allocated while 'it was deemed appropriate, primarily from the standpoint of administrative convenience, that very small subsidies be expensed regardless of type or other considerations. A level of less than 0,5 per cent of sales for any individual subsidy is recommended for this threshold' ([61]). Therefore, the Commission dismissed this claim.

(395) In the absence of any other comments, the conclusions in recitals (638) to (651) of the provisional Regulation are hereby confirmed.

(396) The subsidy rate established with regard to all grants during the investigation period for the sampled exporting producers and for the individual examined exporting producer were as follows:

Grants

Company name	Subsidy rate
BYD Group	0,61 %

([59]) 98/C 394/04 (OJ C 394, 17.12.1998, p. 6).
([60]) Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidized imports from countries not members of the European Community (OJ L 288, 21.10.1997, p. 1).
([61]) G/SCM/W/Rev.2*.

Company name	Subsidy rate
Geely Group	2,27 %
SAIC Group	8,19 %
Tesla (Shanghai) (individual examination)	0,27 %

3.6.2. *Fiscal Subsidy Policy for the Promotion and Application of New Energy Vehicles*

(a) General comments

(397) Following provisional disclosure, some interested parties such as the SAIC Group, the CAAM, the BYD Group, the GOC, and the Geely Group, claimed that the consumer was the ultimate beneficiary of this subsidy scheme. Specifically, it was argued that manufacturers advance the subsidies to consumers on behalf of the government when selling the vehicles by reducing the price to be paid by the customer. In this scenario, the customer was supposed to pay a reduced price for which the company was later reimbursed by the government.

(398) Similarly, some parties claimed that the fact that the prices of BEVs did not increase after the removal of the subsidy does not prove the existence of a benefit. It was argued that market prices are influenced by several factors, including production costs, supply and demand dynamics, consumer expectations and substitution between old and new models. As a result, the prices of BEVs sold in different time periods may not be directly comparable.

(399) Furthermore, it was argued that in cases where consumers did not meet the conditions for the subsidy, the producers reclaimed the subsidy from the consumers, thus questioning the benefit to the producers.

(400) The Commission noted that no evidence was provided showing that the programme was designed to provide subsidies to consumers, using the BEV producers as a mere tool to channel those subsidies. In fact, the evidence showed the opposite. As described in recitals (666) to (671) of the provisional Regulation, the disbursements provided by the GOC to BEV producers in the form of direct cash transfers were a clear and tangible benefit to the BEV producers, as they constituted a direct transfer of monetary resources based on the economic activities of the producers. Although this already conferred a benefit by itself, the investigation further revealed that the subsidy did not influence final consumer prices. Despite a number of factors may have played a role, the analysis demonstrated that the price remained unchanged in the immediate period following the removal of the subsidy. This indicates that the subsidy did not have a discernible impact on the final price paid by customers so that the subsidy was kept the BEV producers. Consequently, these claims were rejected.

(401) Regarding instances where producers may have reclaimed subsidies due to non-compliance, the Commission noted that, as described in recitals (665) to (670) of the provisional Regulation, producers set prices which allowed them to capture the full subsidy and consumers did not benefit in the form of lower prices, thus rendering the claim moot. Furthermore, this situation exemplifies the fundamental structure of the scheme, which places producers at the centre of the policy and prioritises their interests, with the ultimate aim of providing financial support to these entities. Similarly, if the intended beneficiary were the consumer, it would be the government that would be responsible for recovering the funds. No evidence was provided that in the relevant legal framework of this programme BEV producers are used by the government as a tool to provide or reclaim amounts paid by the government to the BEV producers. Consequently, the claim was rejected.

(402) Following definitive disclosure, the CAAM reiterated that consumers were the ultimate beneficiaries of the subsidy scheme. It was argued that the stable prices BEVs after the subsidy removal do not indicate a benefit. It specifically mentioned that maintaining or even keeping prices unchanged for a period after the withdrawal of consumer subsidies is a common practice. Furthermore, they noted that even when the Chinese government reduced vehicle acquisition taxes for consumers, it was common for manufacturers to continue advertising subsidies for a period after the government incentives had expired.

(403) The Commission noted that the CAAM arguments supported the Commission's findings, as they provided additional argument that the pricing of vehicles by manufacturers is not influenced by the subsidy since the prices remain unchanged, i.e. the subsidy has no discernible impact on the final price paid by customers, thus the subsidy is kept by the BEV producers and no benefit is passed on to consumers. Consequently, the claim was rejected.

(404) Following definitive disclosure, the GOC reiterated its claim that consumers are the ultimate beneficiaries of the subsidy scheme and emphasised that consumers are at the centre of the programme. In particular, the GOC claimed that this was stipulated in the legislation. The design of the programme, which involves the disbursements of cash directly to producers, takes into account the special market conditions in China. Furthermore, the GOC noted that if the conditions set out in the programme are not met, the amount of the payment will be reduced accordingly.

(405) With regard to the GOC comments, and in the absence of any further substantiated information, the Commission reiterated its previous conclusion, as set forth in recitals (656) to (661) of the provisional Regulation and recital (400) above, that, having regard to the nature, design and operation of the scheme, the producers are the intended recipients of this subsidy. Regarding the reduction of disbursements in the event of non-compliance with the stipulated conditions, the Commission made reference to the aforementioned recital (401) of this Regulation. Furthermore, the Commission observed that the mere fact of non-compliance with the conditions in question does not imply a change of beneficiaries. The claim was therefore rejected.

(406) Following provisional disclosure, after the imposition of provisional measures, the CAAM contested the treatment of consumption subsidies as production subsidies, claiming that the Union adopted a double standard to define China's subsidies to consumers as subsidies to promote the automotive industry in a far-fetched manner.

(407) The claim put forward by the CAAM was generic and unsubstantiated. Therefore, it was rejected.

(408) Following provisional disclosure, Tesla (Shanghai) and the GOC claimed that the programme had already been terminated in December 2022 and, therefore, the Commission has no legal basis for imposing a provisional anti-subsidy duty for this scheme.

(409) The Commission noted, as described in recitals (662) to (664) of the provisional Regulation, that Chinese BEV producers continued to benefit from this subsidy scheme during the entire investigation period and will continue to benefit from direct transfer of cash under this scheme for an extended period of time after the investigation period. Consequently, the Commission concluded that the conditions for countervailing this scheme are met. Therefore, these claims were rejected.

(410) Following definitive disclosure, Tesla (Shanghai) reiterated that the scheme was terminated and should not be countervailed. As an alternative, the company submitted that the maximum amount the Commission can countervail for Tesla Shanghai is the amount that the company could (potentially) receive in the future. Furthermore, it was argued that the existence of local schemes similar to the national fiscal subsidy policy have no bearing in the assessment of the benefit to Tesla (Shanghai).

(411) The Commission noted that the benefit countervailed is the actual amount of subsidies disbursed by the GOC to the exporting producers during the IP, and reiterated its previous conclusion, as set forth in recitals (662) to (664) of the provisional Regulation and recital (409) above. With regard to the non-assessment of schemes similar to the national subsidy, the Commission noted, as described in recital (664) of the provisional Regulation that the investigation revealed that local authorities, under the direct or indirect guidance of the GOC, have established a large number of similar programmes, some of which closely resemble the national scheme. These local initiatives have the common objective of incentivising the production of BEVs, which will result in continued support for Chinese BEV producers.

(b) Calculation of the subsidy amount

(412) Following provisional disclosure, the Geely Group and Tesla (Shanghai) claimed that the funds received during the investigation period were associated with sales prior to the investigation period and, therefore, not subject to countervailing measures. Should this scheme be deemed to be countervailable, the basis for such a determination should be the sales directly related to the investigation period.

(413) The Commission noted, as described in recital (672) of the provisional Regulation, that the temporal discrepancy between the sale BEVs and the disbursement of government funds, which producers cannot predict, creates uncertainty regarding the timing of disbursements. This uncertainty can extend up to four years. As a result, producers fully realize the benefit only upon receiving the disbursements. Therefore, these claims were rejected.

(414) Following definitive disclosure, the SAIC Group claimed that the Commission did not address its comments concerning the period on the attribution of the program, nor did it respond to its proposal for an alternative calculation.

(415) The Commission noted that the same comments were submitted by different parties and rebutted in recitals (412) to (413) above. These recitals provide the rationale for dismissing the proposed calculation methodology. Consequently, both claims were rejected.

(416) Following definitive disclosure, Tesla (Shanghai) reiterated its claim that the basis for calculation of the benefit be the sales concerned during the investigation period and provided a methodology for it.

(417) The Commission, in the absence of any further substantiated information, reiterated its previous conclusion, as set forth in recital (413) above. The claim was therefore rejected.

(418) Following provisional disclosure, the GOC and Geely claimed that the benefits derived from this subsidy scheme, should not be allocated to exports on the premise that the subsidies were specifically provided for the production and sales of the product under investigation, limited to the Chinese market.

(419) The Commission noted that, under this scheme, the producers benefited from a direct transfer of funds, which provided the companies with substantial resources in the form of cash that was fully at their disposal. The GOC payments were specifically based on the sales of BEVs under a programme designed to support the development of the BEV industry and addressed to BEV producers. Consequently, the allocation of these benefits was based on BEV total turnover. These claims were therefore rejected.

(420) Tesla (Shanghai) submitted that, since the booked amount received by the company under this scheme is treated as taxable revenue, and thus subject to the corporate income tax of 15 % applicable to Tesla (Shanghai) in 2022, there would be double counting to the extent that this benefit is taken into account both under this programme and under the preferential income tax programme.

(421) The company failed to provide positive evidence that the tax paid was directly linked to the reimbursement received under this scheme. Furthermore, Articles 6 and 7 of the basic Regulation do not provide for the deduction of income tax as far as the calculation of the benefit or countervailable subsidy is concerned. Hence, the argument that this would constitute double counting was considered moot.

(422) Following definitive disclosure, Tesla (Shanghai) reiterated that the 15 % income tax should be deducted from the total benefit since it treated the revenue from the fiscal subsidy as taxable income, subject to the 15 % corporate income tax applicable during the investigation period (IP). Tesla argued that there was double counting, as this benefit was considered both under this program and the preferential income tax program.

(423) The Commission noted that the requested deduction does not fall within any of the categories eligible for deduction from the subsidy calculation as detailed in Article 7 of the basic Regulation ([62]). Moreover, the income tax rate does not apply on the income but rather on the taxable income as provided by the EIT, i.e. 'the total income of the enterprise in each tax year less non-taxable income, tax-exempt income, various deductions and permitted amount of losses in previous years made good' ([63]). Such deductions include 'Costs, expenses, taxes, losses and other reasonable expenditure incurred in relation to income received by an enterprise may be deducted when computing the taxable amount of income' ([64]). In addition, certain expenses such as R & D expenses benefit an additional deduction under certain conditions. On this ground, a specific income such as the revenue from the fiscal subsidy cannot be isolated from the calculation of the taxable income that takes other elements into account. Furthermore, the Commission considered that the 15 % income tax rate only applied when there is a positive taxable income Consequently, the claim was rejected.

(424) Following provisional disclosure the BYD Group submitted that the ratio of fiscal subsidy for BEVs to the total fiscal subsidy received during the investigation period used to allocate the prepayment to the BEVs should have been modified after the final settlement decisions of the Ministry of Industry and Information Technology ('MIIT') and the Ministry of Finance ('MIF'). The Commission accepted this claim and revised the calculation.

(425) The Geely Group claimed that some subsidies attributed to one of the companies in the group were already countervailed. The Commission accepted this claim and revised the calculation.

(426) As a consequence, the methodology for determining the subsidy amount as described in recital (675) of the provisional Regulation is confirmed and was applied to the exporting producer granted individual examination.

(427) In the absence of any other comments, the conclusions in recitals (652) to (676) of the provisional Regulation are hereby confirmed.

(428) The subsidy rate of the SAIC Group and the Geely Group regarding the fiscal subsidy policy was updated as a consequence of the correction described in recitals (652) and (654) of this Regulation respectively.

(429) The subsidy rate established with regard to this scheme during the investigation period for the sampled exporting producers and the for the individual examined exporting producer were as follows:

Company name	Subsidy rate
BYD Group	2,01 %
Geely Group	1,94 %
SAIC Group	2,18 %
Tesla (Shanghai) (individual examination)	2,49 %

3.7. **Government provision of goods and services for less than adequate remuneration ('LTAR')**

3.7.1. *Government provision of land use rights for less than adequate remuneration*

(430) Following provisional disclosure, the GOC, the BYD Group, the Geely Group, and the SAIC Group disagreed with the Commission's assessment that Chinese BEV producers have benefited from the provision of land for less than adequate remuneration.

([62]) Article 7 includes the following categories: (a) any application fee or other costs necessarily incurred to qualify for, or to obtain, the subsidy; and (b) export taxes, duties, or other charges levied on the export of the product to the Union, which are specifically intended to offset the subsidy.
([63]) Article 5 of the EIT.
([64]) Article 8 of the EIT.

(431) The GOC alleged that the Commission merely stated that land in mainland China is state-owned or collectively owned, which does not prove the existence of financial contribution and benefit. Furthermore, contrary to the understanding of 'collective' noted by the Commission in recital (677) of the provisional Regulation, 'collective' does not mean that it is composed of villages or townships, but of working people.

(432) The Commission provided in recital (677) of the provisional Regulation an introduction to the land use right system used in the PRC. Contrary to the comments from the GOC, this part is not meant to demonstrate on its own the existence of financial contribution and benefit. In any event, the GOC did not provide any evidence contradicting the statements made in recital (677) of the provisional Regulation, namely that all land in the PRC is owned either by the State or by a collective.

(a) Legal basis

(433) Following provisional disclosure the GOC alleged that only when it is established that prices in the country of provision of land use rights, are distorted because of governmental intervention, the Commission can resort to an out of country benchmark. According to the GOC, several of the legislative documents were not in force in the investigation period. Thus, the Commission has relied on an incorrect legal basis and did not base its 'determination on positive evidence'.

(434) First, the Commission noted that the GOC did not provide any evidence that the legislative documents mentioned were not effective during the investigation period. Second, the GOC did not either demonstrate that the substance of these documents that have allegedly been replaced has changed. Third, the GOC did not call into question the application of the Land Administration Law of the People's Republic of China mentioned under recital (679) of the provisional Regulation.

(435) Following definitive disclosure, the GOC alleged that it has provided the laws relied upon by the Commission were not in force during the investigation period. Therefore, the Commission's assertions that the GOC did not provide evidence that those documents were not effective during the investigation period is factually wrong.

(436) The Commission, however, maintains that no evidence was provided to demonstrate the texts in question were not in force. In any event, the Commission on its own initiative found evidence that the Property Law indeed was repealed in 2021 ([65]). However, the provisions therein were incorporated into Articles 205-462 of the Civil Code which entered into force in January 2021. The Civil Code did not introduce any substantial changes with respect to land use rights (see in particular Articles 246, 260-261 and 330-361 of the Civil Code). Thus, the argument made by the GOC was purely formalistic. Consequently, this claim was rejected.

(b) Findings of the investigation

(437) Following provisional disclosure according to the GOC, no evidence was adduced by the Commission in previous cases that the auctioning system in mainland China was non-transparent and unclear and it relied on old cases and entirely different products without providing any explanation or evidence of the supposed distortion. The Commission allegedly has used the same statement and built a line of case law in the absence of evidence. The GOC also alleged that the Commission neither explained what it investigated as regards the land use rights market in mainland China, nor the changes that it found. In addition, the Commission's statement that land use rights' prices were set arbitrarily by the authorities was not supported by any evidence in general and with instances pertaining to the sampled exporting producers. For the GOC, the price eventually obtained in the bidding process reflects both demand and supply.

(438) The Geely Group alleged that the provisional Regulation does not include any clear indication or reasoning as to why or how Chinese Taipei is a suitable benchmark except for noting that it has been used in certain prior investigations.

([65]) Article 1260 of the Civil Code.

(439) The Commission however noted that the findings made in previous and recent anti-subsidy investigations were adequately substantiated and relate to the same subsidy programmes as those mentioned in the present investigation. For instance, the Commission found in the AFC case that for the plots of land that were provided through bidding, there was only one bidder for the land in each case, and the price paid corresponded to the starting price of the bidding process. The Commission relied in each of these prior investigations on a similar legal framework governing land use rights in the PRC and notably on the fact that local authorities set land prices according to the urban land evaluation system and the government's industrial policy. In recital (682) of the provisional Regulation, the Commission recalled that the current investigation did not show any noticeable change in this respect. The Commission also recalled that the GOC failed to provide evidence showing a discontinuation of this policy. To the contrary, the Commission found that for the BYD Group, the Geely Group, the SAIC Group, and Tesla (Shanghai) the LUR transactions corresponded to either: (i) free transactions, allocations or transfers, (ii) transaction prices corresponding to the bidding starting price (iii) transaction prices corresponding to the guarantee to be paid to take part in the bidding or (iv) specific investment agreements with the local municipality(ies) which included specific provisions on the allocation of land. Thus, on the basis of the information available in this investigation, the Commission rejected those claims.

(440) The GOC argued that the Commission's statement in recital (682) of the provisional Regulation that the sampled exporting producers obtained land use rights at the prices set by the local authorities in the bidding procedures, lacks factual basis.

(441) However, as already mentioned in recital (438) of this Regulation, the Commission has evidence of this statement through the transaction documents of the BYD Group, the Geely Group, the SAIC Group and Tesla (Shanghai).

(442) According to the GOC, there is a secondary land use rights market in mainland China that the Commission did not investigate.

(443) The GOC, however, did not have any evidence that any alleged secondary land use rights market was used by the sampled companies.

(444) The GOC considered that the Commission's finding on specificity is incoherent because if the Commission's specificity analysis were to be correct and only producers from some industries get land use rights at preferential prices, then the Commission should have used the land use rights prices of companies from other sectors to assess the existence of the alleged subsidy. In addition, the Commission failed to make a reasoned and objective assessment of specificity under Articles 4.2(a) and 4.2(c) of the basic Regulation because it did not establish how access to the alleged preferential provision of land use rights is explicitly limited to certain enterprises or sectors.

(445) In this respect, the Commission notes that no party provided evidence of a benchmark for land use rights prices for sectors free from State intervention. Moreover, the Commission did provide the legislative framework according to which local authorities set land price according to the urban land evaluation system which is updated every three years, and the government industrial policy. Furthermore, the Commission could confirm this finding based on the transaction documents provided by the SAIC Group according to which 'the industrial access condition belongs to the automobile manufacturing industry; it is in line with the encouraged and permitted projects in the Guidance Catalogue for Industrial Structure Adjustment'. Thus, documents available to the Commission confirm that belonging to the automobile manufacturing industry is a condition to participate in the bidding procedure for land use rights.

(446) Following definitive disclosure, the GOC commented that it is for the Commission as the investigating authority to establish specificity, and not for the GOC and other interested parties to rebut a negative presumption. It also referred to Case C-559/12 P ([66]) and stated that the Commission is required to gather all information it requires to inform its assessment as to whether the alleged subsidy is specific.

([66]) Judgment of the Court (First Chamber), 3 April 2014, French Republic v European Commission.

(447) Contrary to the allegations made by the GOC, the Commission did not make any negative presumption to establish the specificity of the scheme. As clearly stated in recital (686) of the provisional Regulation, the scheme is considered specific because the preferential provision on land is limited to companies belonging to certain industries, in this case, the BEV industry. Therefore, the claim was rejected.

(448) Following definitive disclosure, the GOC also maintained that the Commission's benefit analysis is unjustifiable and is based on an inappropriate benchmark. According to the GOC, the Commission is incoherent when confirming that the provision of land use rights is specific and, in the same breath, dismisses the argument that the Commission could have used in-country benchmarks emanating from land use rights prices of companies from other sectors that do not benefit from this alleged subsidy, of which there are plenty to choose from.

(449) The Commission, however, fails to see the incoherence mentioned by the GOC. As stated in recital (445) above, the Commission simply stated that no party provided evidence of a benchmark for land use right prices for sectors free from State intervention. Apart from merely stating that there are plenty of benchmarks to choose from, the GOC failed to rebut the Commission's findings. In addition, the GOC seems to confuse the Commission's specificity analysis whereby the Commission demonstrated that the BEV industry is benefiting from land use rights for less than adequate remuneration and the benefit analysis under Article 6(d) of the basic Regulation whereby the Commission considered that the Chinese legislation regulating land uses is distorting the land use rights market and is not subject to market conditions. The fact that the land use rights system as a whole is not functioning as a free market does not prevent the GOC from providing specific industries with land use rights for less than adequate remuneration. Therefore, the claim was rejected.

(c) Conclusion

(450) The Comments of the GOC regarding the conclusion that the provision of land use right by the GOC should be considered a subsidy were addressed together with the comments on the findings of the investigation in recitals (437) to (442) of this Regulation.

(d) Calculation of the subsidy amount

(451) Following provisional disclosure, the GOC alleged that the Commission's assessment of Chinese Taipei being a suitable external benchmark is not based on positive evidence and that land prices in Chinese Taipei do not relate 'to prevailing market conditions in the country of provision'. The GOC stated that the Commission merely lists certain indicators without any supporting data or evidence and requested the Commission to provide additional data concerning the level of economic development, the degree of industrial infrastructures, the density of population, and the similarities between the type of land and transactions used for constructing the relevant benchmark, in China and Chinese Taipei. It also mentions that the population densities in mainland China and Chinese Taipei are vastly different.

(452) Concerning the level of economic development and the degree of industrial infrastructures the Commission found that most entities within the sampled exporting producer groups were located in the east part of the PRC, in developed high-GDP areas in provinces with a high population density surrounding Shanghai and Shenzhen, which were similar to those of Chinese Taipei.

(453) Concerning the similarities between the type of land and transactions used for constructing the relevant benchmark, the Commission highlighted in this respect that in both cases, the transactions concern industrial land of a certain size located in industrial areas.

(454) Concerning the population density, the Commission noted that the GOC compared population density figures at the level of the entire country. Looking closer at population density of the actual locations of the exporting producers, it appears that population density figures are actually quite similar or higher, for example for the Shanghai region where some of the entities of the sampled exporting producer groups and Tesla (Shanghai) are located, the density is over 3 900 inhabitants/square km ([67]) which is almost 6 times the population density of Chinese Taipei.

([67]) shanghai.gov.cn/english2019/pdf/2021-ShanghaiBasicFacts.pdf, last accessed 9 August 2024.

(455) Following definitive disclosure, the GOC stated, first, that several entities within the sampled exporting producer groups are not located in the Eastern part of mainland China. For example, some are located in Xi'an and in Hunan. By picking Shanghai and Shenzhen, the Commission refers to two of the most developed cities in mainland China, which are not comparable to most provinces where BEV producers are located. Second, the GOC notes that all other provinces where BEV producers are located, apart from Shanghai, are significantly less densely populated than Chinese Taipei. The GOC also commented that there are vast differences between the price of LUR between specific provinces and cities in mainland China and that, apart from the issue of lack of comparability, one average benchmark price for land in Chinese Taipei cannot relate to the prevailing market in the entire mainland China.

(456) The Commission, however, never claimed that all BEV producers were located in the East part of the PRC. Instead, the Commission explained that most entities within the sampled exporting producer groups were located in the East part of the PRC, in developed high-GDP areas in provinces with a high population density surrounding Shanghai and Shenzhen. For instance, out of seven production facilities of the Geely group, four are located in Zhejiang, and one in Jiangsu, two coastal provinces in the vicinity of Shanghai. Similarly, out of the eight production facilities of the BYD group one production facility is located in Guangdong, one in Jiangsu, one in Anhui, one in Shandong, and one in Fujian. Finally, at least three of the SAIC production facilities are located directly in Shanghai. Most of these provinces have a high GDP per capita and levels of density that are comparable to Chinese Taipei's. The density of population of Jiangsu, Guangdong, Shandong are even superior to the one of Chinese Taipei. In addition, the Commission underlines that BEV production facilities are often located in cities which have much higher level of GDP per capita and density that the province's average. Therefore, these claims are rejected.

(457) The GOC and the Geely Group also alleged that Chinese Taipei is not an appropriate benchmark because, among others, in mainland China, only a land use right is transferred whereas in Chinese Taipei the actual ownership of the land is also transferred. In addition, according to the GOC, the Commission seems to acknowledge that population density and degree of industrial infrastructure are not entirely comparable between mainland China and Chinese Taipei. Thus, on average benchmark price for land in Chinese Taipei cannot and does not relate to the prevailing market in mainland China. In addition, the land prices used for Chinese Taipei used by the Commission includes both commercial and industrial land prices.

(458) The SAIC Group argued that Chinese Taipei was not a suitable external benchmark for the land-use rights and proposed instead to use benchmarks in Malaysia and Thailand. The SAIC Group submitted that regarding Chinese Taipei:

— the land prices were distorted and highly inflated;

— it had different type of uses than the industrial land used by the SAIC Group;

— land prices were distorted due to its shortage of land;

— it was very different in terms of geography and economic level;

— the GDP and economic structure were not comparable to that in Mainland China.

(459) The Geely Group alleged that the relevance of factors like physical proximity and shared demographics between China and Chinese Taipei for benchmark selection is unclear. In addition, the assertion that the economic development, GDP, and structure of Chinese Taipei are comparable to many provinces and cities in China lacks credibility due to significant differences between them, particularly concerning the cities where Geely Group's exporting producers operate. Finally, according to the Geely Group, calculations did not take into account the significant price differences across different areas of Chinese Taipei and how that impacted benchmarking.

(460) In this respect, the Commission noted that the selection of Chinese Taipei as a benchmark was based on the examination of several factors listed in recital (688) of the provisional Regulation. The Commission considered, however, that even if there were certain differences in the market conditions between land use rights in mainland China and sale of land in Chinese Taipei, these would not be of such nature to invalidate the choice of Chinese Taipei as a valid benchmark.

(461) Following definitive disclosure, the GOC stated that the Commission ignored a critical distinction which affects comparability, namely that in mainland China, only the land use right is transferred for specific years whereas in Chinese Taipei, the ownership of the land itself is transferred. The GOC also commented that there is no evidence that the Commission considered (i.e., evaluated) these differences and their impact on land use rights' prices.

(462) The Commission, however, relied on the benchmark that was considered the most appropriate, even considering differences between the market conditions. The Commission could not identify during the course of the investigation any other adequate benchmark or adjustment method that would adequately reflect these differences in the market conditions. It also notes that the GOC was also unable to present a reliable benchmark that would reflect the difference between land use rights and property rights. Therefore, this argument was rejected.

(463) The SAIC Group proposed instead to use the land prices of Malaysia or Thailand as alternative benchmark options given their suitability over Chinese Taipei for the following reasons:

— Malaysia and Thailand, both located in Southeast Asia, are also within the geographical proximity to Mainland China.

— Both countries are at the comparable level of economic development, GDP and economic structure to Mainland China, as Malaysia and Thailand are classified by the World Bank in the same group of 'upper middle income' countries as Mainland China.

— There are robust economic ties and cross border trade between these two ASEAN countries and Mainland China.

— There are available data relating to land prices in Thailand and Malaysia which are suitable to use as a benchmark. In particular, the available data from Malaysia is more recent than the Chinese Taipei's 2013 prices, which have been used by the Commission.

— In past countervailing investigations, the U.S. Department of Commerce used the land prices in Malaysia and Thailand as the benchmark for land-use rights in China.

(464) After consideration of the claim the Commission considered that the choice of Chinese Taipei as a suitable external benchmark was based on the examination of several factors listed in recital (688) of the provisional Regulation which justified its choice as a valid benchmark. In addition, contrary to the statement made by SAIC, the Commission did not use 2013 prices, but instead actual yearly prices as of 2013. For the years prior to 2013, the Commission made an adjustment to the 2013 data based on economic growth in Taiwan. In contrast, SAIC data only cover a remote isolated year (2010) for Thailand and the year 2022 for Malaysia. The Commission needs historical data to assess land use right prices and cannot rely on a single year because all land use rights were not acquired over a single year. Finally, regarding the level of economic development, SAIC only compared Thailand, Malaysia, and China country wide. The Commission, instead, compared the industrial zones in Taiwan with the relevant industrial provinces in China. On this basis, this claim had to be rejected.

(465) As a consequence, the methodology for determining the subsidy amount as described in recitals (687) to (689) of the provisional Regulation was confirmed and was applied to the exporting producer granted individual examination.

(466) The subsidy rate of the SAIC Group and the Geely Group regarding the government provision of land use rights for less than adequate remuneration was updated as a consequence of the correction described in recitals (652) and (654) of this Regulation respectively.

(467) The subsidy rate established with regard to this subsidy during the investigation period for the sampled exporting producers and for the company that received individual examination amounts to:

Company name	Subsidy rate
BYD Group	1,20 %
Geely Group	0,82 %
SAIC Group	0,65 %
Tesla (Shanghai) (individual examination)	0,05 %

3.7.2. *Government provision of batteries and key inputs for the production of batteries (namely lithium iron phosphate) for less than adequate remuneration*

(a) Introduction

(468) In the absence of any comments, the findings in recitals (691) to (695) of the provisional Regulation were confirmed.

(b) Non-cooperation and use of facts available

(469) The comments received by the GOC and the SAIC Group relating to non-cooperation and the use of facts available were addressed in Section 3.3.1.2. No further comments were received in this regard so that the conclusions drawn in recitals (696) to (700) of the provisional Regulation were confirmed.

3.7.2.1. Government provision of batteries for less than adequate remuneration

3.7.2.1.1. Financial contribution

(a) Battery suppliers acting as 'public bodies'

(470) Following provisional disclosure, the GOC submitted that no law or regulation requiring the supply of batteries or LFP at LTAR existed. Moreover, the GOC added that almost all documents cited by the Commission are non-mandatory plans which do not contain specific means for implementation, that the Commission took the content of GOC laws and plans, as well as news reports, out of context, and that there is thus no legislation or criteria to prove the existence of a countervailable subsidy. These claims were reiterated after definitive disclosure.

(471) The Commission first recalled that, given the refusal from the GOC to cooperate on the relevant elements listed in Section 3.3.1.2 of the provisional Regulation, the Commission had to rely on facts available for its findings concerning input materials.

(472) As already explained in detail in recitals (197) to (203) and in Section 3.7.2.1.2(a) of the provisional Regulation, the State and the CCP exert a decisive influence on the allocation of resources and on their prices, and is enabled to do so through full control over the legislative, executive, as well as judicial branches of the State apparatus

(recital (201) of the provisional Regulation), and through an elaborate system of plans which set out priorities and prescribe the goals the central and local governments must focus on (recital (202) of the provisional Regulation). The claim of the GOC that almost all documents cited by the Commission are non-mandatory is in contradiction with the fact that the objectives set by the planning instruments are, indeed, of binding nature and the authorities at each administrative level monitor the implementation of the plans by the corresponding lower level of government, thereby driving resources to sectors designated as strategic or otherwise politically important by the government, rather than allocating them in line with market forces. As already explained in recital (202) of the provisional Regulation, the objectives set by the planning instruments are of binding nature and the authorities at each administrative level monitor the implementation of the plans by the corresponding lower level of government. The binding nature of plans is also extensively covered in Section 4.3.1 of the China Report ([68]); Article 89 of the Chinese Constitution ([69]) mandates that the State Council draw up and implement plans for national economic and social development and state budgets, while the Organic Law of the Local People's Congresses and Local People's Governments of the PRC ([70]) obliges said authorities to implement the Five-Year Plans (Article 11, 12, 50, 73, 76). Therefore, the claim that, for example, the 2017 Battery Action Plan is a mere development goal plan, and not a price control policy, was deemed factually incorrect, as the 2017 Battery Action Plan is first and foremost adopted to implement the 'Notice of the State Council on Issuing the Development Plan for the Energy Saving and New Energy Vehicle Industry (2012-2020)' (Guofa [2012] No 22) and the 'Guiding Opinions of the General Office of the State Council on Accelerating the Promotion and Application of New Energy Vehicles' (Guobanfa [2014] No 35), and also contains specific provisions on the pricing of batteries per kw/h (recitals (710) and (746) of the provisional Regulation).

(473) The Commission disagreed with the GOC's statement that it took the content of law, plans, and news reports out of context. The findings on public body and on entrustment and direction are the result of an in-depth fact-based analysis of extensive objective evidence, including legislation, regulations and other official policy documents published by the GOC, reports from international organisations, and other reliable independent sources, which were duly referenced and supported by quotes contextualising the content of the documents. The GOC claimed that the Mineral Resources Law and its Rules for Implementation are general requirements and only provide guidance to the GOC in formulating policies, but do not give the GOC unlimited power over its own resources; however, this contradicts the very own content of Article 3, which *verbatim* states that 'The State Council represents the State to execute the ownership over mineral resources. The State Council authorizes the competent department of the State Council for geology and minerals to impose a unified control over the allocation of mineral resources in the whole country' ([71]). In addition, the GOC claimed that the press statements given by the MIIT mentioned in recital (751) of the provisional Regulation has been taken out of context, as the GOC did not intervene in price setting, as it only endeavoured to address the peak in global lithium-ion prices by expanding upstream supply and combating unfair competition. However, as the GOC admitted itself in its submission, the goal to 'jointly guide the lithium salt price to return to rational level' is not a mere general guiding principle, but a price setting intervention meant to bring back lithium prices to 'a rational level', as the MIIT and other industry associations were reportedly fully involved in achieving this goal. Therefore, these claims were rejected.

(474) Following definitive disclosure, the GOC submitted that that the Commission misrepresented its arguments, as in recital (473) of this Regulation, the GOC did not admit that the goal to 'jointly guide the lithium salt price to return to rational level' was price setting. The GOC stated that 'in the context of the peak in global lithium-ion prices at that time, as well as the activities of unfair competition such as speculative buying, procurement for hoarding... the GOC endeavoured to address the problem by expanding upstream supply, and combating unfair competition, but did not intervene in price setting'. In addition, the GOC added that Commission has not cited any evidence to support its view that there was 'price setting intervention meant to bring back the rational level', and that the Commission did not cite any factual or legal basis to support its assertion that 'the MIIT and other industry associations were reportedly fully involved in achieving this goal' (recital (473) of this Regulation).

([68]) See the updated Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the purposes of Trade Defence Investigations, 10 April 2024, SWD(2024) 91 final (the 'China Report') – Chapter 4, Section 4.3.1, pp. 92-97.
([69]) See http://www.npc.gov.cn/englishnpc/constitution2019/201911/1f65146fb6104dd3a2793875d19b5b29.shtml.
([70]) Available at: http://www.npc.gov.cn/npc/kgfb/202203/0ff47fbc69b443e3b9a99bef91adcb26.shtml.
([71]) Available at https://www.gov.cn/zhengce/zhengceku/2021-12/29/content_5665166.htm.

(475) The Commission disagreed with these statements. As covered in recital (751) of the provisional Regulation, the MIIT, which is the department under the State Council responsible for the administration of China's industrial branches and information industry ([72]), affirmed itself that 'we will push [the prices of raw materials] back toward the reasonable level as soon as possible', that 'the ministry will help accelerate the development of local resources in China' and that 'the sector's stable operation is facing great pressure that requires all relevant parties to cope with together' ([73]). Concerning the allegations that the Commission did not cite any factual or legal basis to support some of its assertions, the Commission recalled that all sources used in the provisional Regulation were duly referenced, and that the proof of involvement by the MIIT and other industry associations is mentioned in footnotes 310 and 311 of the provisional Regulation. Therefore, these claims were rejected.

(476) Following provisional disclosure, the CAAM argued that battery and raw materials suppliers cannot be classified as 'public institutions', and that the Commission cannot impose high tariffs on the battery suppliers.

(477) The Commission noted that, contrary to what the CAAM claimed, the duties imposed apply to Chinese BEV exporting producers, and not to their battery and raw material suppliers. Moreover, the claim by the CAAM concerning the fact that battery and raw materials cannot be classified as public bodies was generic and unsubstantiated. Hence, for the reasons mentioned in recitals (821) and (899) of the provisional Regulation, the claim was rejected.

(478) Following definitive disclosure, the CAAM submitted that the Commission erroneously classified battery enterprises, raw material enterprises, and associations as public entities exercising governmental functions, adding that the Commission has erroneously concluded that the Chinese government intervenes in price setting, and that it erroneously inferred that the Chinese government exercises comprehensive control over industry associations and companies through party work organs.

(479) The comments submitted by the CAAM were general and unsubstantiated, and therefore the Commission rejected them.

(480) Following provisional disclosure, the GOC and the Geely Group contested the classification of inputs suppliers as public bodies. The GOC presented the following claims:

(1) The industry associations (China Battery Industry Association and China Industry Association of Physical and Chemical Power Sources, herein referred as the 'CBIA' and 'CIAPS', respectively) are not public bodies controlled by the GOC, citing the 'Opinions on the Implementation of the Reform of Comprehensively Decoupling Industry Association and Chambers of Commerce from Administrative Organs' as a source evidencing that China's trade associations operate independently from the government, and that the provisions on CCP presence in industry associations are irrelevant for the analysis of control by the GOC.

(2) The CBIA and the CIAPS have no control over their members, nor the ability to determine the prices at which the member companies sell batteries or lithium iron phosphate ('LFP'), as the data provided by the three sampled companies showed purchases of batteries and LFP from different suppliers at different prices.

(3) The members of the association are not controlled by them, nor they can control the associations, and the Commission has failed to provide evidence that the Associations fulfil their duties to control and reduce prices by means of exercising coordination and regulation.

([72]) https://english.www.gov.cn/state_council/2014/08/23/content_281474983035940.htm.
([73]) Ministry set to stabilize price hikes affecting auto industry, State Council of the People's Republic of China, 25 April 2022. Available at https://english.www.gov.cn/statecouncil/ministries/202204/25/content_WS62664ddcc6d02e5335329e3a.html.

(481) The Geely Group submitted that the evidence relied by the Commission failed to demonstrate that the CBIA and the CIAPS are vested with governmental authority and that the Commission incorrectly concluded that all their members are likewise vested with governmental authority. In addition, the Geely Group submitted that, since not all battery suppliers are members of associations, it cannot be concluded that these suppliers are vested with governmental authority. Lastly, the Geely Group submitted that partial state-ownership of certain battery suppliers does not demonstrate that these companies can be considered public bodies.

(482) The Commission disagreed with the claim by the GOC that industry associations are autonomous organisations acting freely on the market. As already established by the Commission in recital (779) of the provisional Regulation, while the NDRC Opinions formally foresaw a separation between industry associations and the government, they also ensured not only a continued financial dependency of industrial associations on the government authorities but also the continued full CCP control over them through party building work bodies within the social organisations. The analysis carried out by the Commission in recitals (780) to (785) of the provisional Regulation also confirmed such CCP presence in the decision-making and day-to-day operations of the industry associations, as enshrined in the Articles of Association of CBIA and CIAPS. No information was provided by the GOC or any other party contradicting these findings. Moreover, the research carried out by the Commission after provisional stage also confirmed that industry associations do not operate independently as free market operators but are under the full control of the CCP and implement government-mandated policies. This is exemplified by the latest statements of Ge Honglin, the Party Secretary and Chairman of China Nonferrous Metals Industry Association ('CNMIA') ([74]), which also contains a sub-association on lithium. As already covered by recital (94) of Commission Implementing Regulation (EU) 2023/1618 ([75]), the CNMIA is an industry association where the CCP intervenes into operational decision making. While the CNMIA, which also contains a subsection on the lithium industry, was not an industry association analysed by the Commission at provisional stage, its latest statements contradict what the GOC alleges. In this 'social organization', like in several industry associations, the party building organisations are embedded within its structure ([76]). According to its Party Secretary, 'although industry associations are social organizations, the requirements for Party building are consistent with those of the Central and State Organs', and that the CNMIA has 'thoroughly implemented the decisions and arrangements of the CPC Central Committee and the State Council, and cooperated with relevant departments to formulate, publish and interpret industrial policies such as the "Guidelines for Industrial Structure Adjustment", "Work plan for stabilizing growth in the nonferrous metals industry", and "Mining Rights Transfer Income Collection Methods"'. Moreover, both the CBIA and the CIAPS are under the management of the State Council. Hence, this claim was rejected.

(483) On the second point raised by the GOC, as noted in recital (864) of the provisional Regulation, the Chinese market has been deemed distorted due to the national and sector-specific policies enacted by domestic battery suppliers, particularly those pertaining to pricing structures. Consequently, notwithstanding the fact that certain battery or LFP suppliers may charge different prices, all battery acquisitions by the sampled companies during the investigation period are regarded as impacted by the State policies and measures in place pursuing the stated

([74]) See https://www.cnmn.com.cn/ShowNews1.aspx?id=452307.

([75]) Commission Implementing Regulation (EU) 2023/1618 of 8 August 2023 imposing a definitive anti-dumping duty on imports of tungsten carbide, fused tungsten carbide and tungsten carbide simply mixed with metallic powder originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council, OJ L 199, 9.8.2023, p. 48).

([76]) 'First, [the Association's Party Committee] emphasizes that the Party's leadership of the Association can only be strengthened, not weakened, and writes the adherence to the Party's leadership and strengthening of Party building into the Association's charter, clarifying the legal status of the Party organization in the Association's governance structure; second, the Party organization is embedded in the Association's governance structure, the Party's leadership is integrated into the specific links of the Association's governance, and all Party building work is concretized, standardized, and institutionalized; third, [the Association's Party Committee] educates and guides Party members, cadres, and workers to deeply realize that the leadership of the Communist Party of China is the most essential feature of socialism with Chinese characteristics and the greatest advantage of the socialist system with Chinese characteristics. We must always trust the Party, love the Party, and work for the Party', source mentioned in footnote 71.

policy objectives. This assessment arises from the understanding that all suppliers operate domestically, within the same market conditions. The power that the associations hold over their members and over pricing policies has already been presented in depth in Section 3.7.2.1.1(b) of the provisional Regulation. Moreover, the GOC did not submit any evidence to substantiate its claim. Therefore, the claim was rejected.

(484) Concerning the third point, the claims raised by the GOC were general, and the party did not provide any evidence to prove the point raised. The Commission recalls that extensive research has been done on the Chinese industry associations and their members, and the price control mechanisms in place, as covered by recitals (748), (751), (792) – (799), and (807) – (809) of the provisional Regulation. Therefore, the claim was rejected.

(485) The claim put forward by the Geely Group on the governmental authority of industry associations and their members was unsubstantiated, and therefore rejected. On the third claim submitted by the Geely Group, the Commission recalls that, as stated in recital (767) of the provisional Regulation, neither the CBIA nor the CIAPS publish the full list of their members. The Commission recalls that, as already covered in recital (282) of the provisional Regulation, the GOC alleged that it had no control over the CBIA, which is not formally affiliated with the GOC. This was disproved by the findings in recitals (777) and (778) of the provisional Regulation, which shows that the GOC exercises full control of the CBIA. First and foremost, the association in under the direct management of the State Council (recital (777) of the provisional Regulation), and the GOC remains in charge of the administration of the association and the appointment of key individuals in charge of its work (recital (780) of the provisional Regulation). During the verification visit at the GOC, the Commission requested a list of all members of the CBIA, which the GOC refused to provide. In the absence of information provided by the GOC as well as of official public data covering the full list of members of the CBIA and the CIAPS, the Commission drew inferences that even more battery suppliers could be members of these associations. Moreover, membership in the battery associations is one of the several elements assessed by the Commission. The evidence collected showed a situation whereby the GOC exercises its influence over the market of batteries and LFP. Moreover, concerning the last claim put forward by the Geely Group on partial state-ownership, the Commission recalls that the relationship between the input suppliers and the GOC is only one of the several elements it analysed, i.e. the legal and economic environment prevailing in the PRC, the GOC's policy objectives to develop the BEV industry, and the core characteristics and functions of the input suppliers. Therefore, these claims were rejected.

(486) Following definitive disclosure, CATL submitted that the Commission failed to demonstrate that the GOC possess any ownership in, or exercises any meaningful control over CATL, beyond the normal influence of the government in any country, that CATL is undisputably a privately-owned company, and the partnerships CATL entered into with State Owned Enterprises are merely for commercial purposes. CATL also stressed that the cooperation agreements it entered with local governments, or the creation of the National Engineering Research Centre for Electrochemical Energy Storage Technology do not suggest any influence by the GOC in CATL. The company also added that its price setting for batteries is entirely market based and devoid of any government influence.

(487) CATL also submitted some comments on the industry associations, arguing that CATL's membership in any association was not relevant to the BEV investigation, and that such membership cannot be considered as it being bound to implement any decisions by the association. The company also added that the Commission did not point to any evidence that would point to CATL being forced to do under threat of sanctions.

(488) The claims raised by CATL were general and unsubstantiated. The Commission highlighted that the relationship between the GOC and CATL has been extensively covered in recitals (786) – (788) of the provisional Regulation, and that several provincial documents exist that explicitly support the development and show how this is linked with the undertaking of national key tasks (recitals (731), (732), (803), (804) of the provisional Regulation). On pricing, the Commission recalled that this was already covered in recitals (802) and (805) of the provisional Regulation, and recital (484) of this Regulation.

(489) On the claims on membership of the associations, the Commission recalled that extensive research was carried out on the industry association and their members, and that CATL did not submit any evidence to substantiate their claims that it should not be considered as 'public body'. Moreover, the Commission already addressed similar claims in recital (482) and (485) of this Regulation. On the last point raised by CATL, the Commission recalled that recital (834) of the provisional Regulation already covered the evidence showing that members must abide by the directions of the association aimed at regulating the economic behaviour of their members in order to comply with GOC policies, in order to avoid repercussion inflicted upon them by the CBIA. Therefore, these claims were rejected.

(490) Following provisional disclosure, the Commission collected additional information on LG Chem Nanjing New Energy Solutions ('LG Nanjing'), a foreign-owned battery producer in China which supplies several of the investigated exporting producers. Concerning LG Nanjing, the Commission found additional evidence corroborating its findings that battery producers in China are public bodies, showing that the construction of LG Nanjing served the purpose of providing batteries at low prices for the benefits of BEV producers. The company was established in 2015 by LG Chem, the chemicals subdivision of LG Corp. and the parent company of LG Nanjing ([77]). In 2014, South Korea's LG Chem signed a memorandum of understanding on cooperation with the Nanjing Municipal Government. The factory established in Nanjing received 'various assistance from the Nanjing Municipal Government, so the batteries produced [would] have price advantages' ([78]). Moreover, LG Chem established in 2014 a joint venture with two Chinese state-owned partners (i.e. Nanjing Zijin Technology Incubation Special Park Construction Development and Nanjing New Industrial Investment Group), to build the first phase of the battery factory in Nanjing, thus showing that the State was involved in the setup of the factory, and that LG's supply of batteries at lower prices for the benefit of carmakers was one of the stated goals of such endeavour.

(491) Following definitive disclosure, and on the basis of a further examination of the actual market share of Chinese imports in the EU and US markets, as well as the effects of GOC's overarching policies in favour of the BEV industry in the export markets, the Commission amended recital (813) and (814) of the provisional Regulation as follows:

(492) The BMI data presents monthly lithium-ion battery cell price assessments for the Chinese, European, Asian (excluding PRC) and North American markets expressed on an ex works basis. As far as the investigation period is concerned, it shows that the ex-works NMC cell price per kW/h was at least 10 % and up to 30 % higher in the EU, North American or Asian markets than on the Chinese market regardless of the specific NMC chemistries (111, 523, 622 or 811). In the absence of publicly available cell price assessment for LFP cells and in the absence of cooperation by the GOC, the price difference between the Chinese and other markets was also considered valid for LFP cells. Such comparison should be seen against the background that the market share of Chinese battery producers in the EU was close to 40 % in 2023 ([79]). The Commission could not find granular-enough data on the market share of Chinese battery producers in North America. However, US customs data ([80]) shows that in 2023, the United States alone directly imported 13,1 USD billion in lithium-ion batteries from China, accounting for 70 % all US li-ion battery imports in 2023. Moreover, the European Union and North America are the top two destination for Chinese li-ion exports. Given the evidence above, the Commission could not exclude that Chinese battery producers would also constitute a significant percentage of the North American market share. This is also confirmed by BMI data that shows that the EU and also the North American markets were dependent on imports in the investigation period as domestic supplies accounted respectively for only 26 and 34 % of the demand. In parallel, the PRC had sufficient battery oversupply to fill such gap. In the absence of elements pointing to the contrary, the Commission considered that PRC battery imports could fill such gap and had a market share of up to around 70 % on these two markets. While this price comparison shows that the prices on non-Chinese

([77]) https://www.lgchem.com/upload/file/introduce/2020_IntroductionofLGChem_ENG%5B7%5D.pdf.

([78]) See https://www.chinanews.com.cn/auto/2014/07-04/6350650.shtml.

([79]) https://www.businesskorea.co.kr/news/articleView.html?idxno=204581; https://jw.ijiwei.com/n/882555#:~:text=Chinese%20battery%20makers%20see%20European,in%20first%20half%20of%202023&text=(JW%20Insights)%20Oct%2030%20%2D%2D,SNE%20Research%20on%20October%2029.

([80]) https://www.atlanticcouncil.org/blogs/energysource/what-us-tariffs-on-chinese-batteries-mean-for-decarbonization-and-taiwan/#:~:text=Chinese%20Lithium%2Dion%20Battery%20Exports%20to%20USMCA%20(Billion%20USD)&text=According%20to%20the%20US%20Census,2023%2C%20as%20measured%20in%20value.

markets are systematically higher, the Commission also considered that this analysis was made on a conservative basis since the price quotations were made on ex-works basis so that shipping costs from the PRC to these markets were not taken into account. Should shipping costs be included and considering the market share of Chinese battery producers on these markets, the price difference would be even higher.

(493) As for CATL, in the absence of more precise data, the Commission analysed the annual reports of CATL for the period 2021-2022. The reports showed a deterioration of profitability on the Chinese domestic market which was compensated by higher profits recorded on the export side. While the company reported high gross profit margins both on the domestic and on the overseas market for batteries in December 2021, this trend was reversed in June 2022, when the company started to lose profitability on the Chinese domestic market, while it increased its profit margin on the export side. In the absence of cooperation by CATL either through the non-cooperation of the GOC or CATL's refusal to provide a questionnaire reply in its quality of related supplier of batteries to two sampled groups, the Commission relied on facts available and inferred that the decrease in profitability on the domestic Chinese market for batteries was the reflection of the governmental policies aiming at the provision of batteries to BEV producers on the domestic market for less than adequate remuneration. In contrast, in the export markets, CATL was capable of charging higher prices and obtain higher profits, while still benefiting from the support received by the GOC. The difference in the profitability levels in the export and domestic market clearly shows that CATL was unable to maximise its profits in China and take rationale business decisions as a normal market player operating in an open market economy. Instead, CATL was forced by the GOC policies to supply batteries at cheaper prices to the domestic BEV industry. Such practice is also confirmed by the provisions contained in CATL's Articles of Associations and Related Transaction Management System, as explained in recital (801) of the provisional Regulation, which provide that prices of any kind of transactions with related entities shall be set by the State.

(494) Hence, in comparison to recitals (813) and (814) of the provisional Regulation, the Commission amended the percentage of market share of Chinese battery producers in the EU and North American markets, focusing mostly on the analysis of the EU market (recital (492) of this Regulation), and the analysis of the profitability of CATL on the domestic vs export markets (recital (493) of this Regulation).

(495) In the absence of further comments and in view of the additional findings by the Commission, the conclusions drawn in recitals (702) to (821) of the provisional Regulation were confirmed.

(b) Battery suppliers acting as private bodies entrusted or directed by the GOC

(496) Following provisional disclosure, the GOC and the Geely Group contested the finding that the battery and LFP suppliers were entrusted or directed by the GOC. In particular, the GOC submitted that:

(1) The Commission did not present any evidence that the GOC interferes in the day-to-day operations of the enterprises or in the pricing of their products, and that the fact that the trend of domestic prices differ from export or international prices is not dispositive of the conclusion that the prices are set by the GOC.

(2) The Commission has misinterpreted Article 46 of CATL's Article of Association, and that a translation error had been committed by the Commission. The GOC submitted that this provision sets out the rules for the consideration of related transactions, involving five different scenario for exemption from review: i.e. transactions under certain limited sectors, participation in public tenders and auctions, transactions in which the company unilaterally obtains an advantage, provision of funds by a related party to the company at an interest rate not higher than the one stipulated by the PBOC, or when the company provides products and services to its own management on the same terms as those provided by non-affiliated parties. Second, the GOC submitted that the translation of the provisions of Article 46 should have read as 'where the pricing of related party transactions are stipulated by the State'.

(497) The Geely Group submitted that (a) membership in the associations is insufficient to demonstrate that battery suppliers are entrusted or directed by the GOC; (b) there is no evidence that battery suppliers that are foreign-owned and/or not members of the CBIA or the CIAPS or state-owned are entrusted or directed by the government to provide batteries at LTAR; (c) the evidence relied by the Commission on entrustment and direction does not support the finding that the GOC entrusted or directed the CBIA and CIAPS or their members to provide batteries at LTAR.

(498) At the outset, the Commission recalled that its findings were based on facts available pursuant to Article 28 of the basic Regulation as the GOC refused to supply the necessary information and engage in discussions on this issue.

(499) On substance, concerning the first claim raised by the GOC, the Commission recalled the findings in Section 3.7.2.1.1 of the provisional Regulation, and highlighted that under point (1) (recitals (760) to (789) of the provisional Regulation), covering the relationship between the input suppliers and the GOC, the Commission established pervasive presence of the GOC in the day-to-day management in both industry associations and private companies. On pricing, domestic prices do not only differ from export or international ones but were also found to be consistently lower than export prices due to the sectoral policies put in place by the GOC in China (see recitals (816) and (920) of the provisional Regulation for the findings on the differences between Chinese domestic and export prices). The difference between Chinese domestic prices and worldwide prices, excluding China, is covered in recitals (858) to (860) of the provisional Regulation.

(500) On the translation of Article 46 of CATL's Articles of Association, even by adding 'where' in the sentence 'the pricing of related party transactions are stipulated by the State', this does not affect the content of the findings by the Commission. Indeed, the text unequivocally contains provisions that there are certainly cases where the pricing of related party transactions are stipulated by the State. Furthermore, the GOC did not contest the wording of Article 22 of CATL's Related Party Transaction Management System which contains a similar provision. Moreover, the GOC alleged that this price-setting pertain to five different scenarios, but no evidence to support this statement was submitted. In any event, the findings are based on facts available since the GOC refused to cooperate, and a comment on a specific translation element taken out of context of the rest of the elements and evidence relied upon by the Commission cannot invalidate the findings on this point. Therefore, the claim was rejected.

(501) The claims raised by the Geely Group were general and unsubstantiated. The Commission recalls that extensive research has been carried out on the industry association and their members, and that the Geely Group did not submit any evidence to substantiate their claims that battery producers are not entrusted and directed by the GOC. Moreover, the Commission highlights that the CBIA and CIAPS did not publish the full list of members (recital (767) of the provisional Regulation) and therefore, as also already explained in recital (485) of this Regulation, even more battery suppliers could be part of these association. In addition, being a foreign-owned enterprise does not preclude it from being a public body (if they are vested with public authority) and, in the alternative, entrusted and directed by the GOC. As covered in recital (485) of this Regulation, also foreign-owned battery producers displayed the same behaviour as Chinese-owned battery makers. On this basis, these claims were rejected.

(502) Following definitive disclosure, the GOC submitted that it disagreed with the analysis carried out by the Commission in recitals (499) to (501) above, citing that (a) the Commission failed to provide evidence of the pervasive presence of the GOC in the input suppliers' day-to-day operations; (b) the fact that domestic prices of inputs are lower than export prices is the result of full competition in the Chinese market, which has larger demand for those inputs; and (c) in the translation of Article 46 of CATL's Articles of Association and Article 22 of CATL's Related Transaction Management System, the word 'where' is essential to the correct understanding of the content of this provision. In this regard, the GOC submitted that the term 'stipulated by the State' should be understood as existing in a hypothetical situation, and not as an indication that state pricing exists, submitting the Price Law of the People's Republic of China ([81]) and the Central Pricing Catalogue ([82]) as evidence of that to

([81]) https://english.www.gov.cn/services/doingbusiness/202102/24/content_WS6035f101c6d0719374af97b2.html.
([82]) An English translation is available at https://www.industry.gov.au/sites/default/files/adc/public-record/exhibit_d8.2_-_central_government_pricing_catalogue_-_2020.pdf.

highlight that batteries are not included in the scope. CATL also submitted comments on this, explaining that Article 46 of CATL's Articles of Association and Article 22 of CATL's Related Transaction Management System prescribes the circumstances where no approval for related party transactions by the Shareholders' meeting is needed, and the fact that the Shareholders' meeting would not need to approve price-setting for related party transactions if those are based on a state-stipulated price does not imply that the latter actually happens, let alone that in a way relevant to the BEV investigation. The company added that the Commission failed to demonstrate that there has been any actual instance of government driven price setting.

(503) The Commission disagreed with these claims. Concerning the first and second claims, both comments were general and unsubstantiated, and the Commission stressed that such comments were already both addressed in recital (499) of this Regulation as well as recital (751) of the provisional Regulation. With regard to the third one on CATL's Articles of Association, the Commission analysed the evidence submitted by the GOC. While the Central Pricing Catalogue submitted by the GOC does not explicitly contain provisions on batteries, this does not invalidate the body of evidence collected by the Commission. First and foremost, there would be no reason why such a provision would be necessary if there were no instances of the State-fixing prices in this industry and/or State influence in it. Second, government interference in price-setting has already been extensively covered in Section 3.7.2.1.1(b) of the provisional Regulation. Third, evidence of government influence in price setting is evident not only from a wide body of evidence in the provisional Regulation, but also from other sources, such as Fujian's NDRC 'Implementation Opinions on Accelerating the High-Quality Development of the Lithium Battery, New Energy and New Materials Industry' ([83]), where CATL is headquartered, which provide that the relevant departments and affiliated institutions of the government shall 'achieve continuous reduction in product costs [of lithium batteries, new energy, and new materials]'. The Commission recalled that, while this constituted additional evidence of controls on costs, recital (751) of the provisional Regulation already covered government control of batteries raw materials prices. Therefore, the Commission rejected these claims.

(504) The GOC previous comments on public body in recital (474) of this Regulation and the comments above in recital (502) of this Regulation as well as their rebuttals also apply to LFP suppliers acting as private bodies entrusted or directed by the GOC.

(505) In the absence of further comments, the conclusions drawn in recitals (822) to (840) of the provisional Regulation were confirmed.

3.7.2.1.2. Benefit, specificity and calculation of the subsidy amount

(a) Benefit

(506) In the absence of comments concerning benefit, the findings drawn in recitals (841) to (855) of the provisional Regulation were confirmed.

(b) Specificity

(507) Following provisional disclosure, the Geely Group alleged that the provision of batteries is not specific to BEV manufacturers, arguing that there is no limitation to whom the batteries could be sold to, as they remain available for purchase across industries and markets, and that the Commission did not examine whether the subsidy scheme is based on objective criteria or conditions in the sense of Article 4(2)(b) of the basic Regulation. Lastly, the Geely Group submitted that production of batteries is not exclusively or primarily targeted at the NEV/BEV industry.

([83]) https://fgw-fujian-gov-cn.translate.goog/zfxxgkzl/zfxxgkml/bwgfxwj/202212/t20221215_6079792.htm?_x_tr_sch=http&_x_tr_sl=auto&_x_tr_tl=en&_x_tr_hl=en&_x_tr_pto=wapp.

(508) The Commission first recalled that the GOC's set of measures were directed to benefit only certain industries, including the domestic BEV industry. Indeed, even though the distortions on batteries also benefit products other than BEVs, the benefit is explicitly limited as it is available only to certain industries in China, being only those in the battery value chain. The measures are, therefore, specific under Article 4(2)(a) of the basic Regulation. Moreover, the Geely Group did not indicate any elements nor provide any evidence showing that the conditions under Article 4(2)(b) of the basic Regulation and Article 2.1(a) of the SCM Agreement would be met in the case at hand. As the set of measures by the GOC fulfilled the requirements of Article 4(2)(a) of the basic Regulation, the claims were rejected.

(509) Following definitive disclosure, the Geely Group submitted that the Commission's analysis was contradictory and lacked sufficient evidence, since (a) the Commission did not have access to the complete set of information on the membership of companies in the CBIA and the CIAPS; and (b) in establishing *de jure* specificity, the Commission did not provide a reasoned and adequate explanation of its findings, and that in its conclusions, the Commission explicitly recognized that the battery supply distortions also benefit the BEV producers, and did not contest that the batteries remain available for purchase across various industries and markets. For the above reasons, the Geely group submits that the Commission could have not properly concluded that the provision of batteries is *de jure* specific, and there is no evidence demonstrating that the granting authority, or the legislation pursuant to which the granting authority operates, explicitly limits access to a subsidy as suggested by the Commission.

(510) Concerning the first claim put forward by the Geely Group, the Commission highlighted that as acknowledged in recital (485) of this Regulation, during the verification visit at the GOC, the Commission requested a list of all members of the CBIA, which the GOC refused to provide. In the absence of information provided by the GOC as well as of official public data covering the full list of members of the CBIA and the CIAPS, the Commission drew inferences that even more battery suppliers could be members of these associations. Moreover, the Commission performed a detailed analysis of companies' participation in the industry associations, despite the lack of cooperation from the GOC and the lack of transparency from the industry associations; as explained in recital (767) of the provisional Regulation, the Commission was able to ascertain companies' participation in the CBIA, CIAPS, and other industry associations by looking at their annual reports and other information available online, such as the list of members of their executive bodies. With regard to the second claim raised by the Geely Group, the Commission already addressed it in recital (508) of this Regulation. Therefore, both claims were rejected.

(511) In the absence of further comments, the findings made in recitals (856) to (857) of the provisional Regulation were confirmed.

(c) Calculation of the subsidy amount

(512) Following provisional disclosure the GOC submitted that the benchmark should not exclude Chinese market prices, based on the fact that:

— The conditions for the use of external benchmarks pursuant to Article 14(d) of the SCM Agreement are not applicable in this case. The GOC recalled that the Appellate Body Report on *US – Softwood Lumber IV* ([84]) determined that the specific facts of whether private prices have been distorted by the dominant position of the government in the market as a supplier of certain commodities (predominant role) must be determined on a case-by-case basis in the light of the specific facts of each investigation. Moreover, the GOC cited that the Appellate Body ruled that there must be evidence of a direct impact of a government intervention on prices, otherwise a more detailed analysis of how the government intervened on prices is required (Appellate Body Report – *US Countervailing Measures (China)(Article 21.5 – China)*, WT/DS437/AB/RW, para. 5.159).

([84]) Appellate Body Report, *United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada*, WT/DS257/AB/R, para. 102.

— The fact that NMC and LFP batteries have different physical characteristics and are not comparable, and that the price of NMC batteries cannot be used as a benchmark price for LFP. The GOC added that due to the size of China's battery market, the purchase quantity and conditions may be very different from the BMI benchmark data which rely on overseas transactions, and that the Commission did not show to take this factor into account. Moreover, according to the GOC, the Commission's use of price-weighted average comparisons of different chemical elements to calculate a benchmark price for batteries may not reflect the true price in a competitive market.

(513) Regarding the claim by GOC and Geely, whose comments are summarized below in recital (515) of this Regulation, that the benchmark used should relate to the prevailing market conditions for the goods in question in the country of provision, the Commission noted that, in its analysis of public body and entrustment and direction, it took into account the relevant sectoral policies, especially on prices, in Section 3.7.2.1.1 of the provisional Regulation, and in particular under point (3)(b). Furthermore, additional research supporting the evidence of government price control is covered in recitals (541) to (542) of this Regulation. In light of the findings in Section 3.7.2.1 and recitals (846) and (918) of the provisional Regulation the Commission established that the applicable sectoral policies in place in China distort the prices of batteries on the entire domestic market. As a result, the Commission established that the terms and conditions prevailing in China could not be adjusted, on the basis of actual costs, prices and other factors available in that country, by an appropriate amount which reflects normal market terms and conditions. Hence, the Commission had to resort to world market benchmark prices, pursuant to Article 6(d)(ii) of the basic Regulation.

(514) Moreover, contrary to what the GOC claimed in its second point, the NMC battery price was not used for LFP battery price. As explained in recitals (847) and (859) of the provisional Regulation, the BMI data allowed the calculation of benchmarks for the investigation period per chemistry, namely LFP and NMC. Even more, as noted in the same recital, in terms of chemistries, the weight of the different sub-chemistries of NMC batteries (111, 523, 622, 811) was also taken into account. Second, as explained in recitals (843) to (855) of the provisional Regulation, Chinese domestic prices were considered distorted by the Commission, pursuant to Article 6(d)(ii) of the basic Regulation. In any event, the Chinese average prices reported in BMI are sourced from the Chinese market players. For this reason, as explained in recital (859) of the provisional Regulation, Chinese average prices were excluded from the benchmark price in BMI. Consequently, the BMI benchmark used reflected worldwide average prices per kw/h of cells for LPF and NMC respectively. If the Commission would rely on benchmarks including (also) Chinese prices affected by the distortions due to the GOC intervention, these benchmarks would by definition not be appropriate to calculate the benefit. Finally, the GOC did not provide any evidence, on how China battery purchase quantity and conditions may be different from the one reported in BMI. Consequently, the claim was rejected.

(515) The Geely Group submitted that:

— The purchases of batteries from suppliers that are not state-owned or members of relevant industry associations should be excluded from the benefit calculation.

— The Commission resorted to an out-of-country benchmark without addressing the requirement that the benchmark used should relate to the prevailing market conditions for the goods in question in the country of provision.

— The adjustments the Commission made to the prices the Geely Group paid to alleged related suppliers lack justification and argued that CATL and Jiangsu Contemporary Amperex should not be considered related suppliers. The Commission's adjustments did not properly account for the specific characteristics of the batteries purchased and incorrectly replaced prices from related suppliers with those from unrelated ones. Additionally, the Commission's use of an average benchmark price across all battery types and its calculation of benefits for all battery purchases during the investigation period were inappropriate, as some batteries were not used in the production of battery electric vehicles (BEVs) for export to the EU.

(516) Concerning the other claims raised by Geely, the Commission highlighted that:

— As noted in recital (864) of the provisional Regulation and recitals (513) to (514) above, the Chinese market has been deemed distorted due to the national and sector-specific policies and related measures enacted by domestic battery suppliers, particularly those pertaining to pricing structures. These measures, which were already listed and explained in the provisional Regulation, include: investment support from the government (recital (719)), tax incentives (recital (722)), guidance funds (recital (721)), development and sales targets (recital (725)), equity pledges, rewards, insurance compensation, government support on land, electricity and gas use (recital (726)), special investment funds, credit support (recital (730)), financial guarantees, syndicated loans (recital (734)). In addition, the Commission found several examples of GOC's measures on pricing of batteries and on cost reductions for the BEV industry, contained in the NEV Plan 2012-2020 (recital (745)), the 2017 Battery Action Plan (recitals (746) and (747)), and the Notice on the Battery Industry (recital (749)), as well as in official press statements (recital (751)). Consequently, notwithstanding the fact that certain battery suppliers may not be direct affiliates of recognized governmental associations or institutions, all battery acquisitions by Geely Group during the investigation period are regarded as impacted. This assessment arises from the understanding that all suppliers which operate domestically, regardless of their public or private ownership, are following the governmental policies and prices, and are thus equally affected by the same distorted market conditions. Lastly, the Commission recalls that, as explained in recital (767) of the provisional Regulation, both the CBIA and the CIAPS do not publish the full list of members. Due to the absence of a complete set of information on the membership in either of the two associations, the Commission cannot consider with certainty that any company is not a member.

— As noted in recital (845) of the provisional Regulation, due to the partial non-cooperation of the GOC, the Commission lacked crucial information on the market situation in China of suppliers of batteries and on possible adjustments that needed to be made, while the information collected and verified at the cooperating sampled exporting producers was specific to the quantities, kW/h, battery chemistries (NMC or LFP) used for the production of BEVs by the sampled exporting producers in the investigation period. In this regard, as noted in recital (847) of the provisional Regulation and recitals (513) to (514) above, BMI data allowed the calculation of benchmarks for the investigation period per chemistry, namely LFP and NMC. Even more, in terms of chemistries, the weight the different sub-chemistries of NMC batteries (111, 523, 622, 811) based on the corresponding demand in the EV sector were also taken into account. Therefore, the Commission considered that BMI benchmark prices properly reflected the differences in prices of the different types of batteries specifically purchased by the sampled exporting producers. Additionally, the party did not substantiate, let alone provide evidence, regarding any aspect in which the BMI data could conflict with the battery purchases made by the sampled exporters.

(517) On the claims raised on the adjustments, first, as noted in recitals (858) and (859) of the provisional Regulation and Geely Group's specific disclosure, the Commission analysed the information on file relating to transfer price in order to determine whether battery purchase transactions could be considered as made at arm's length. However, the information on file i.e. submitted price agreements and contracts by Geely group did not include any information in this regard, that could have shown the prices charged by the related suppliers to Geely Group and other independent customers. Thus, the Commission was not in a position to determine that the prices paid to related suppliers were at arm's length or to use such prices. As a result, the Commission replaced those related prices with the price paid per kw/h for similar battery type to unrelated suppliers. Although the Geely Group asserted that it provided a contract example for the purchase of batteries between related Geely entities that referenced the market price of raw materials, such contract did not show that the prices paid between these related entities for the acquisition of batteries were at arm's length, nor did it include any independent valuations of these market prices.

(518) Second, in relation to the purchases by Geely Group from related supplier CATL, given the existence of joint ventures between the Geely Group and CATL, these two companies were considered related in the framework of this proceeding, therefore purchases made by Geely from this supplier were considered transactions between related parties.

(519) Third, the assertion that the Commission merely substituted the prices for related suppliers with the price per kilowatt-hour (kW/h) paid to unrelated suppliers is inaccurate. As per recital (859) of the provisional Regulation, the prices between related parties within the Geely Group were replaced with the price paid per kW/h for comparable products from unrelated suppliers. This means that the price paid by a specific Geely entity to its own unrelated supplier was utilized for the appropriate battery chemistry (LFP and NMC) and battery type (cell, module, or pack). In instances where the same Geely entity did not procure from any unrelated supplier, as stated in recital (859) of the provisional Regulation, the weighted average price per kW/h for similar products at the Geely Group level was used. This approach was consistently applied on a kW/h basis, taking into account both the battery chemistry (LFP and NMC) and the battery type (cell, module, or pack).

(520) Fourth, the Commission did not limit itself to using an average benchmark price across all battery types. When the Geely Group reported battery purchases with varying kW/h capacities (e.g., 143/120/88 kW/h), the Commission considered the highest capacity, which was the most conservative approach. Furthermore, neither the different sub-chemistries of NMC batteries (111, 523, 622, 811) nor the battery forms (e.g., pouch) were systematically reported by the Geely Group companies, nor were such details provided in the provisional comments. Consequently, the Commission could not apply these specificities to the Geely Group. In any case, the assertion that NMC batteries (type NCM111) and pouch batteries are not used in Geely Group's BEVs destined for the EU and should have been excluded from the calculations is irrelevant. As the provision of batteries at less than adequate remuneration benefited the entire production of BEVs and not only exports to the Union, the benefit calculated for the purchase of batteries is expressed on the BEVs produced by the group, regardless of their destination, in accordance with Article 7(2) of the basic Regulation.

(521) Fifth, regarding the claim that some of the batteries have not been used in the production of BEVs or not in BEVs for export to the Union, hence should have been excluded, the Commission noted that the sampled exporting producers were instructed to report all of their battery purchases for the production of BEVs. Specifically, in addition to detailing each purchase transaction, the exporters were required to indicate the BEV model for which each battery was utilized. Consequently, all battery purchase transactions were considered, and the benefit calculated was expressed based on the total number of BEVs produced, irrespective of their destination. The SAIC Group submitted that in line with Article 28(3) of the basic Regulation, the information concerning battery purchases that it submitted in summary form should not have been disregarded by the Commission, which instead relied on information provided by another exporting producer as facts available.

(522) As mentioned in recital (348) of the provisional Regulation, the Commission considered that the SAIC Group deliberately withheld information that was readily available and therefore caused undue difficulties for the Commission to arrive at a reasonably accurate finding. Furthermore, as noted in recital (349), the Commission had concluded that the accuracy of the limited information provided by the SAIC Group with regard to value or quantity could not be verified. For these reasons, and in accordance with Article 28(3), the Commission could not rely on the information provided by the SAIC Group. This claim was therefore rejected.

(523) The SAIC Group also claimed that the conclusions asserted at recital (700) of the provisional Regulation had not been properly justified as the Commission did not explain the reasons why it was reasonable to use the information of another exporting producer group regarding battery purchases. More specifically, it referred to recital (811) of the provisional Regulation where the Commission concluded that the information relating to the Geely Group 'was not considered by itself sufficient to draw meaningful conclusions with regard to the effect of governmental control over power battery industry association on battery prices charged to BEV producers'. As a result, the SAIC Group considered that this subsidy scheme resulted in the highest subsidy margin calculated for a single subsidy scheme for the SAIC Group having severe potential financial consequences.

(524) As mentioned in recital (318) of the provisional Regulation, the SAIC Group provided only partial information relating to its purchases of batteries, whose accuracy both in terms of value and quantity could not be verified by the Commission. Consequently, the Commission informed the SAIC Group of its intention to apply facts available within the meaning of Article 28 of the basic Regulation and invited the SAIC Group to provide comments. The Comments submitted by the SAIC Group were not of a nature to change the Commission's assessment so that the Commission had to resort to facts available.

(525) In this regard, the Commission used information that was available on the file; i.e. information from another non-integrated group of exporting producers that purchased similar batteries and manufactured similar BEV models. This was the only non-integrated sampled group that purchased batteries and that had significant domestic and export BEV sales in the investigation period. The fact that the information relating to the Geely group with regard to the effect of governmental control over power battery industry association on battery prices charged to BEV producers was not considered by itself sufficient does not disqualify the use of the information on the Geely group's battery purchases in terms of prices and corresponding benefit calculation as being relevant facts available on file. In particular, recital (811) of the provisional Regulation concerns the different issue of establishing the effect of government control over prices of batteries. The only conclusion in that recital was that in view of the lower market share and volume of battery sales of the Geely Group it was not possible to establish such control on that basis only. This recital did not deal with the reliability of battery prices of the Geely Group, let alone concluding that such battery prices were not representative of the Chinese domestic market prices of batteries. As a matter of fact, these battery prices from the Geely group were the most appropriate benchmark on file given the level of integration of the group and the types of batteries involved, in accordance with Article 28 of the basic Regulation. Furthermore, as mentioned in recital (860) of the provisional Regulation and to mirror the situation of the SAIC Group, the Commission excluded certain batteries destined to BEV models that were not similar to those sold by the SAIC Group from the calculation of the benefit.

(526) In addition, the SAIC Group was made aware, at the beginning of the investigation and in the course of the exchanges regarding the possible application of facts available, that, following the application of facts available, the result of the investigation may be less favourable to the party than if it had cooperated. In any case, the SAIC Group did not propose any alternative source of information in this regard. On this basis, this claim was rejected. Based on the above and on the provisions contained in recitals (700) and (860) of the provisional measures, the Commission considered that the information concerning the Geely Group amounted to a reasonable replacement of the necessary information in order to make findings for the SAIC Group and it had explained the reasons why it was reasonable to use the information of another exporting producer group regarding battery purchases.

(527) In its comments following the publication of the provisional Regulation, Tesla (Shanghai) argued that no benefit existed concerning the provision of batteries and their key inputs, due to specific procurement situation which for confidentiality reasons could not be disclosed in the Regulation. For the reasons explained in a specific disclosure to this exporting producer, the claim was rejected.

(528) Following definitive disclosure, Tesla Shanghai submitted comments on the allocation of the benefit for batteries. These comments were partially accepted and addressed in a company-specific disclosure.

(529) Several cooperating exporting producers made claims concerning the subsidy amount based on the BMI data used by the Commission, including the methodological choice and the existence of clerical errors. Further to these claims, the Commission analysed the relevant data available in BMI more closely, as well as the methodology used to determine the appropriate benchmark to quantify the subsidy amount arising from this programme.

(530) In particular, the Commission found that, according to BMI data, during the IP, Chinese local demand for battery cells was much lower than the Chinese production on the market. In fact, China's surplus amounted to 43 % during the IP. Such Chinese excess supply of Chinese batteries was the result of the specific policies and GOC interventions as detailed at Section 3.7.2.1 of the provisional Regulation, resulting in overproduction and the need to export at low prices to allocate such an overproduction in other markets covering the deficits in that input. In fact, a more detailed analysis of the datasets available in BMI, namely the supply and demand data of battery cells in different geographical areas, showed that during the IP there was a deficit of around 300 % in Europe and of around 200 % in North America (i.e. in those markets the demand for battery cells was much higher than the actual domestic supply). This deficit was filled by Chinese exports ([85]) of part of their surplus production which was even greater than the deficit of all geographical areas. From a detailed analysis of the BMI supply and demand data in the different geographical areas, it appears that the Asia-Pacific market (excluding Chinese data) (APAC (ex China) data) had the smallest deficit, i.e. 9 % during the IP. Furthermore, the data in that market showed a surplus of 24 % in 2022 and a deficit of 21 % in 2023. The analysis further showed that the prices in the other regions where there was significant presence of Chinese exports were much lower than in APAC (ex China) region. This suggests that the higher the percentage and presence of Chinese market battery surplus batteries in the regional markets, the lower the prices of the corresponding datasets for such markets in the IP.

(531) Therefore, the Commission found it appropriate to use the data from the APAC (ex China) market as opposed to data from all markets, which is tainted by the Chinese subsidised exports. In particular, in view of the lack of cooperation by the GOC and the Chinese battery producers and absent other reliable information, the Commission used the BMI prices in the APAC (ex China) region. The benchmark used contained the actual prices for the last quarter of 2022 given the surplus observed in that year. In contrast, bearing in mind that in 2023 the market conditions showed a deficit in that market, for the first three quarters of 2023, the benchmark prices in the BMI were adjusted by the price difference between the APAC (ex China) region and China for the last quarter of 2022 amounting to 12 % on average.

(532) Moreover, the Commission indicated at recital (813) of the provisional Regulation that the benchmark used at provisional stage was calculated on a conservative basis because BMI prices were quoted on an 'ex works' basis and thus did not include transport costs. This finding is confirmed on a country wide basis, where evidence on file shows that most of the purchased batteries are made on an ex-work basis. However, where applicable, the Commission added the actual shipping costs borne by the exporting producers that purchased batteries on the basis of delivery terms other than ex works.

(533) Following re-disclosure, Tesla Shanghai disagreed with the rationale behind the revised BMI benchmark data. In particular, Tesla disagreed with the Commissions conclusion, namely, the higher the percentage and presence of Chinese market battery surplus batteries in the regional markets, the lower the prices of the corresponding datasets for such markets in the IP, claiming that the BMI price and demand data does not confirm this assumption.

(534) The Commission however re-confirmed its conclusion based on the BMI data. In the investigation period, the deficit for batteries in Europe and North America was around 200 % – 300 %, and the average price of the NMC battery in these regions was around 130 – 134 USD/kWh. Conversely, the deficit for batteries in the APAC (ex-China) region was only around 9 %, and the average price was higher than that in Europe and North America. The company misinterpreted the rationale of the Commission by asserting that 'the data contradicts that the price differential between regional prices and China prices would be smaller whenever there is a deficit'. The Commission's determination to utilize data from the APAC (excluding China) market, rather than data from all markets – which is compromised by Chinese subsidized exports – was not predicated on the price differential

([85]) See recital (492), and in particular footnote 72, which shows that the market share of Chinese battery producers in the EU was close to 40 %.

between Chinese prices and those of other regions. Furthermore, the price differential between the Chinese market and the European or North American markets during all available periods is deemed unreliable, as it has been significantly affected by substantial deficits in battery supply and the resultant increased presence of Chinese exports.

(535) Tesla Shanghai also disagreed with the Commissions adjustment of the prices in APAC (ex-China) region during the first three quarters of 2023 (the Commission considered these prices were already affected by the market conditions, that showed a deficit in that market during this period). The company claimed that the adjustment should have been applied upward on the battery prices in China.

(536) The Commission disagreed with such suggestion, as throughout its analysis in this investigation, it consistently affirmed that Chinese battery prices were substantially subsidized and, consequently, could not serve as a reliable foundation for such an adjustment.

(537) The Commission identified the actual price of the battery in the APAC (excluding China) region, during the final quarter of 2022 as the most reliable benchmark upon, which the adjustment was based, given the surplus observed in this region in 2022. The arguments of the company were therefore dismissed.

(538) The subsidy rate established with regard to this subsidy during the investigation period for the sampled exporting producers and for the company that received individual examination amounts to:

Provision of batteries for less than adequate remuneration

Company name	Subsidy rate
Geely Group	9,62 %
SAIC Group	12,60 %
Tesla (Shanghai) (individual examination)	4,35 %

3.7.2.2. Government provision of LFP for less than adequate remuneration

3.7.2.2.1. Financial contribution

(a) LFP suppliers acting as 'public bodies'

(539) As explained in recital (470) of this Regulation, the comments submitted by the GOC on input suppliers acting as 'public bodies' pertained to both battery and LFP producers. The Commission addressed these comments in recitals (471) and (472), (480), and (482) to (484) of this Regulation.

(540) Following provisional disclosure, the BYD Group submitted that the analysis on LFP suppliers lacked factual evidence, and that no document showed that the suppliers of LFP sold the products to the BYD Group for realizing the policy objectives. The BYD Group re-submitted the purchase ledger for LFP as support evidence. The BYD Group added that the investigation did not show that associations direct their members to adopt their economic decisions for the benefit of the BEV industry. According to the BYD Group, the Commission failed to present evidence that the State has specifically 'vested power' in the association. Based on this, the BYD Group argued that there is thus no well-established evidence to conclude that LFP suppliers act as 'public bodies' and their supplies of goods fall under the umbrella of goods at LTAR, and there is thus no ground to not accept in-country prices.

(541) As noted in recital (864) of the provisional Regulation, the Chinese market has been deemed distorted due to the national and sector-specific policies in place and related measures, particularly those pertaining to pricing structures. Consequently, all LFP acquisitions by the BYD Group during the investigation period are regarded as impacted. This assessment arises from the understanding that all suppliers operate domestically according to the policies and other forms of GOC interference, within the same distorted market conditions. Therefore, the prevailing market conditions in China were deemed distorted, and the application of Article 6(d)(ii) was warranted. Moreover, the Commission recalls that, due to the non-cooperation from the GOC (Section 3.3.1.2 of the provisional Regulation), the Commission did not receive any information on the characteristics of the Chinese domestic market of inputs and had thus to resort to facts available. Moreover, the price differences between the BYD LFP suppliers have no bearing on the assessment of the Commission; as it was already acknowledged in recital (891) of the provisional Regulation, the LFP prices supplied to the BYD Group followed completely different trends than the Chinese export prices during the investigation period (recital (920) of the provisional Regulation). Therefore, the claim was rejected.

(542) As already covered in point (a)(3)(b) of Section 3.7.2.1.1 and recitals (744) to (757) of the provisional Regulation, the Commission found that the provision of batteries and their inputs is regulated by the GOC with the goal to lower prices for the benefit of the BEV industry. Additional evidence of price controls mandated by the GOC on the battery inputs is available in the 'MIIT Work plan for stabilizing growth in the nonferrous metals industry' ([86]) published in September 2023. In fact, one of the main goals is to 'strengthen the supply and price stability of key products' through 'build[ing] an upstream and downstream supply and demand docking platform, guid[ing] non-ferrous metal resource development and smelting enterprises to sign long-term procurement agreements with downstream users, and stabilize the supply of key products such as copper, aluminium, and lithium [and] improv[ing] the "red, yellow, and blue" early warning mechanism for the supply of bulk raw materials, strengthen expectation guidance, and prevent large price fluctuations and malicious speculation […] support[ing] key enterprises to carry out commercial reserves, and scientifically and orderly regulate the relationship between market supply and demand' ([87]). Cooperation between upstream and downstream actors to stabilize supply and demand, supervision of supply and price control fluctuations are all instruction already contained in previous plans, such as the 2017 Battery Action Plan and the Notice on the battery industry (see recitals (746) to (750) of the provisional Regulation). This not only confirms that the GOC has exercised its control over prices already since 2017, but also that these efforts continue to be sustained throughout the investigation period and beyond.

(543) In addition to the central plans confirming pricing controls exercised and mandated by the GOC already covered in point (2) of Section 3.7.2.1.1, and in particular recital (751) of the provisional Regulation, the Commission found additional evidence of industry associations formulating industrial policies and undertaking government tasks such as stabilizing supply and demand expectations and control price fluctuations. This is exemplified by the latest statements of Ge Honglin, the Party Secretary and Chairman of China Nonferrous Metals Industry Association ('CNMIA') ([88]). As already covered by recital (94) of Implementing Regulation (EU) 2023/1618, the CNMIA is an industry association where the CCP intervenes into operational decision making. In this 'social organization', like in several industry associations, the party building organisations are embedded within its structure ([89]) (as covered by recital (779) of the provisional Regulation). The CNMIA has 'thoroughly implemented

([86]) See https://www.baiyinqu.gov.cn/XZJDBMDW/bmdw/byqgyhxxhj/fdzdgknr/lzyj/zcfg/art/2023/art_167c3aa7ceed4497a6cec6779167f187.html.

([87]) Ibid.

([88]) See https://www.cnmn.com.cn/ShowNews1.aspx?id=452307.

([89]) 'First, [the Association's Party Committee] emphasizes that the Party's leadership of the Association can only be strengthened, not weakened, and writes the adherence to the Party's leadership and strengthening of Party building into the Association's charter, clarifying the legal status of the Party organization in the Association's governance structure; second, the Party organization is embedded in the Association's governance structure, the Party's leadership is integrated into the specific links of the Association's governance, and all Party building work is concretized, standardized, and institutionalized; third, [the Association's Party Committee] educates and guides Party members, cadres, and workers to deeply realize that the leadership of the Communist Party of China is the most essential feature of socialism with Chinese characteristics and the greatest advantage of the socialist system with Chinese characteristics. We must always trust the Party, love the Party, and work for the Party', source mentioned in footnote 9.

the decisions and deployments of the CCP Central Committee and the State Council, and cooperated with relevant departments to formulate and publicize and interpret industrial policies such as the "Guidelines for Industrial Structure Adjustment", "Work plan for stabilizing growth in the nonferrous metals industry", and "Mining Rights Transfer Income Collection Methods"; […] in response to the ups and downs in the prices of strategic metal varieties such as lithium and silicon, assisted government departments in strengthening communication with upstream and downstream enterprises and striving to stabilize market expectations; […] signed strategic cooperation agreements with more than ten local governments such as Anhui, Jiangxi, Gansu, and Guangxi, effectively promoting the rational layout of regional industries and regional coordinated development, and strongly supporting the transformation and upgrading of local industries'. [emphasis added]

(544) Following definitive disclosure, the GOC submitted that the statement of the CNMIA that the Commission relied on in recital (543) of this Regulation is irrelevant, as it relates to a completely different association, and is in any case inconsistent with evidence on record. In addition, the GOC argued that Commission did not respond to the comments on the raw material suppliers as public bodies through their participation in the industrial associations. The GOC reiterated that the participation of these suppliers in the industry associations does not make them public bodies, and that the Commission has not explained how these associations control and intervene in price setting.

(545) The Commission recalled that the quote from the CNMIA was used to support of the Commission's findings that industry associations are not independent bodies free from State control, and thus relevant for this investigation. With regard to the allegations from the GOC that the Commission did not respond to its comment on public bodies, the Commission had already explained in recital (539) of this Regulation, that the comments submitted by the GOC on input suppliers acting as 'public bodies' pertained to both battery and LFP producers. The Commission addressed these comments in recitals (471) and (472), (480), and (482) to (484), of this Regulation. Therefore, the claims were considered moot.

(546) Following definitive disclosure, the BYD Group resubmitted its comments stating that the Commission analysis lacked factual evidence to demonstrate that commercial operations of LFP suppliers and their market behaviours were structured and developed for materializing the policy objectives of the GOC, adding that being a member of an industrial association or having a party organisation within a company does not mean that LFP suppliers would have lost their independent decision-making abilities, corporate powers, and general financial authority, which are all granted by the applicable Chinese laws. Moreover, the BYD Group stressed that the fact that the prices of LFP supplied to the BYD Group followed completely different trends as compared to export prices is irrelevant, as different markets have different prices. Lastly, the BYD Group argued that the fact that LFP prices varied based on the supplier indicated that price-setting works in function of market demand and supply and has no bearing with GOC policy objectives.

(547) The Commission already addressed part of these comments at definitive disclosure in recitals (541) to (543) of this Regulation. Concerning the allegations on the independent decision-making of LFP suppliers, this is refuted by the evidence contained in the provisional Regulation (recitals (779), (786), (787), (877)), while the trends in LFP domestic vs. export prices has been addressed in recitals (905) and (920) of the provisional Regulation, which confirms that LFP suppliers are not acting as free market operators in the Chinese domestic market and are not taking economically rational decision. Therefore, the Commission rejected these claims.

(548) Following provisional disclosure, the Commission found additional evidence of Hunan Yuneng New Energy Materials Co., Ltd. and its subsidiaries implementing national policies and acting as public bodies, as covered in Section 3.7.2.2.1(a) of the provisional Regulation. First, recent statements by the Xiangtan Municipal People's Government ([90]) confirm that Hunan Yuneng New Energy Materials is considered not only managed as a partially state-owned enterprise (see recital (881) of the provisional Regulation), but also as an enterprise carrying forward the development of Xiangtan and, ultimately, the State. Under the section focused on '[o]ptimization and integration of state-owned enterprise platforms', the Xiangtan Government strives to '[i]ntegrate the Industrial Investment Group and the Electrochemical Group to form the Electrochemical Industrial Investment Group, actively build a first-class market-oriented enterprise holding two listed companies, and strive to become a leader in China's new energy battery materials. In February [2023], Hunan Yuneng New Energy Company, in which the Electrochemical Group invested and held a stake, was successfully listed on the Shenzhen Stock Exchange's Growth Enterprise Market' ([91]). Xiangtan Electrochemical is a municipal state-owned enterprise under the management of the SASAC of Xiangtan. Moreover, the development of Hunan Yuneng and its state-owned shareholder, the Xiangtan Electrochemical Group, are linked with Xiangtan Government's goals to build a group of enterprises with an operating income of 10-billion, through 'implement[ing] "one enterprise, one policy", and focus on supporting Hunan Yuneng New Energy Battery Materials Co., Ltd. Company, Harbin Electric Wind Energy Co., Ltd. and other enterprises to reach the 10 billion level [of operating income]' and to 'support […] Xiangtan Electrochemical Group Co., Ltd. and other leading enterprises in the industry to expand related businesses and broaden their business scope, [and] integrate upstream and downstream resources through mergers, acquisitions and reorganization' ([92]).

(549) In Kunming province, where Yunnan Yuneng New Energy Materials Co., Ltd, a subsidiary of Hunan Yuneng, is located, the Anning City government negotiated with Yunnan Yuneng for the establishment of an investment project of over 1 billion CNY. According to Anning City government, the management of the city 'combines party building with industrial development, focusing on promoting party members and cadres to fulfill their responsibilities, and fully serving enterprises and projects' ([93]). In particular, the Yunnan Yuneng New Energy Battery Materials project is considered to be 'a vivid manifestation of the **self-breakthroughs of party organizations at all levels and the majority of party members and cadres**' ([94]) [emphasis added]. The deep links between party building committee at the central and local levels and enterprises, is confirmed by the evidence that '[t]he Party Working Committee of Anning Industrial Park guided Yunnan Yuneng to establish a party branch. […] In May [2023], the company's party branch also joined the park's new energy battery material industry chain party committee. Through exchanges on the party building platform, it reached a hydrogen peroxide procurement cooperation with Yunnan Yuntian Petrochemical Co., Ltd., an enterprise located in the park, to solve the past problem of high cost of purchasing hydrogen peroxide from outside the province' ([95]). Party building thus plays a pivotal role in the development of enterprises and thus advance development of national policies mandated by the GOC. An example of such is provided by the Kunming government, which reports that the party building committees in Anning Industrial Park helped establish purchase agreements between companies located in the park, and financial service agreements between banks and companies, 'tied by the "red line" of party building in Anning Industrial Park' ([96]). The role of party building on private entities has been extensively covered in recital (787) of the provisional Regulation, and the evidence above confirms that the CCP exerts influence over all types of companies in China, and that it can use party building work units within businesses and in local governments to exert its influence. As already covered in recital (885) of the provisional Regulation, the development of Anning Industrial Park in also meant at achieving the goals contained in the Yunnan Action Plan. The findings above thus confirm that one of the biggest market players in China for LFP, Hunan Yuneng New Energy Materials, is a state-owned enterprise whose development is deeply linked with the achievement of local and national goals (recital (548)), and it further adds to the body of evidence that LFP suppliers abide to and implement the GOC's policy objectives and thus perform governmental functions.

([90]) See https://www.xiangtan.gov.cn/427/428/25384/25890/content_1270225.html.
([91]) Ibid.
([92]) See https://www-hunan-gov-cn.translate.goog/zqt/zcsd/202204/t20220415_22737172.html?_x_tr_sl=auto&_x_tr_tl=en&_x_tr_hl=en&_x_tr_pto=wapp.
([93]) See https://www-yn-gov-cn.translate.goog/ztgg/fdbnl/ynxd/202212/t20221211_251627.html?_x_tr_sl=auto&_x_tr_tl=en&_x_tr_hl=en&_x_tr_pto=wapp.
([94]) Ibid.
([95]) See https://www.yn.gov.cn/ztgg/jdbytjwhjc/cyh/xgzx/202312/t20231208_291411.html.
([96]) Ibid.

(550) Following definitive disclosure, the GOC submitted that the evidence covered above in recitals (548) and (549) of this Regulation does not support the conclusions of the Commission, as:

— The news report from the Xiangtan Municipal Government does not prove that it is an implementer of state policy. The same applies to the policy from Hunan provincial government, which only shows that the company is a recipient of supportive policies and not an implementer of state policy.

— The reports about the Yunnan Provincial and Anning Municipal governments refer to the existence of party organisations and services and support provided for the company's operations and development, and do not support the assertion that Yunnan Yuneng New Energy Materials implemented state policies and acted as a public body.

(551) The Commission disagreed with these claims. The formation of the Electrochemical Industrial Investment Group is meant to 'actively build a first-class market-oriented enterprise holding two listed companies'. The Commission recalls that, not only the Electrochemical Group invested in Hunan Yuneng New Energy Materials, but the latter company was also listed on the Shenzhen Stock Exchange in February 2023, and that the development of Hunan Yuneng New Energy Materials serves Xiangtan Government's goals to build a group of enterprises with an operating income of 10-billion, while the evidence on file concerning Yunnan Yuneng New Energy Materials Co. explicitly links the company achievements with party organization achievements. Therefore, these claims were rejected.

(552) In the absence of further comments and in view of the additional findings by the Commission, the conclusions drawn in recitals (861) to (912) of the provisional Regulation were confirmed.

(b) LFP producers acting as private bodies entrusted with functions or directed by the GOC

(553) As explained in recital (496) of this Regulation, the comments submitted by the GOC on entrustment and direction pertained to both battery and LFP producers. The Commission addressed these comments in recital (498) of this Regulation.

(554) Following definitive disclosure, the BYD Group argued that the fact that during the investigation period purchase prices varied among LFP suppliers contradicts the Commission findings on entrustment and direction, as it must be shown by the Commission that price setting is a response to the policy goals set by the GOC.

(555) The Commission pointed out that claims on price control had already been addressed in recitals (541) and (542) of this Regulation. A price variation is irrelevant if those prices are below market terms and such a level is the result of the GOC's intervention on the market. Therefore, these claims were rejected.

3.7.2.2.2. Benefit, specificity and calculation of the subsidy amount

(556) Following provisional disclosure, the BYD Group argued that the Commission calculated the benefit twice for some inter-company purchases of battery packs. The claim was accepted, and the calculations were revised accordingly.

(557) The GOC submitted that the use of China's export FOB price as the external benchmark does not ensure that the resulting benchmark related or refers to, or is connected with, prevailing market conditions in the country of provision, and that it consequently overestimates the normal domestic market price, given that the global production of LFP is concentrated in China, the quantity of LFP exported from China is limited, and such exports are not necessarily for the production of power batteries.

(558) In light of the findings in Section 3.7.2.1 and recitals (846) and (918) of the provisional Regulation the Commission established that the applicable sectoral policies in place in China distort the prices of both batteries and LFP on the entire domestic market. As a result, the Commission established that the terms and conditions prevailing in China could not be adjusted, on the basis of actual costs, prices and other factors available in that country, by an appropriate amount which reflects normal market terms and conditions. As recalled in recital (924) of the provisional Regulation, given the existing dominant conditions on this specific type of lithium, and the lack of any other reasonable benchmark, the Commission had to resort to Chinese export prices to the rest of the world.

(559) The GOC comments on the external benchmarks covered in recital (512) of this Regulation covered both battery and LFP suppliers. The Commission addressed these claims in recital (513) of this Regulation.

(560) In the absence of further comments, the conclusions drawn in recitals (913) to (929) of the provisional Regulation regarding benefit, specificity and calculation of the subsidy amount were confirmed.

(561) The subsidy rate established with regard to this subsidy during the investigation period for the sampled exporting producers amounts to:

Provision of lithium for the production of batteries for less than adequate remuneration

Company name	Subsidy rate
BYD Group	7,2 %

3.8. Revenue foregone through tax exemption and reduction programmes

3.8.1. *Enterprise Income Tax ('EIT') reduction for High and New Technology Enterprises*

(a) Legal basis, financial contribution, and benefit

(562) In the absence of comments, the Commission confirmed its findings with regard to the legal basis, financial contribution and benefit of this programme as provided for in recitals (931) to (940) of the provisional Regulation.

(b) Specificity

(563) Following provisional disclosure, the GOC argued that the EIT reduction for High and New Technology Enterprises and the preferential pre-tax deduction of research and development expenses programs are not limited to a sufficiently discrete segment of the Chinese economy in order to qualify as 'specific' within the meaning of Article 2.1(a) of the SCM Agreement. In this regard, it referred to the fact that not all BEV producers benefited from the alleged tax reduction for high and new technology enterprises (HNTEs).

(564) The GOC also argued that the Commission had failed to establish specificity in an objective manner based on factual evidence, as the legal basis on which it relied for one exporting producer was unclear; i.e. the Commission did not indicate whether the benefit stemmed from a regional subsidy within the meaning of Article 2.2 of the SCM Agreement and Article 4(3) of the basic Regulation due to the location of this exporter or from Article 4(2)(a) as mentioned in the provisional Regulation due to its status as HNTE.

(565) The GOC also argued that this alleged subsidy program was not specific as the legislation pursuant to which the granting authority operates, establishes objective criteria or conditions governing eligibility, and the amount of the tax reduction, and that eligibility is automatic and that the qualification criteria and conditions are strictly adhered to. More specifically, the GOC argued that the lower tax rate is available to all enterprises which meet the conditions and does not favour certain enterprises over others because companies from all sectors, covering the entire economy are eligible to obtain a HNTE certificate.

(566) In the same vein, the GOC argued that the Commission had relied on *de jure* specificity by analysing the 'legislation pursuant to which the granting authority operates' without assessing the eligibility conditions of the subsidy and whether the limitation on access to the subsidy to certain enterprises is express, unambiguous or clear from the relevant legal instrument or statements of the granting authority ([97]). The GOC also argued that the Commission had singularly focused on BEV producers that supposedly benefited from the alleged preferential tax treatment without investigating, 'all enterprises or industries eligible to receive that same subsidy' ([98]).

(567) The Commission disagreed with these claims as it considered the tax schemes described in Sections 3.8.1 to 3.8.2 of the provisional Regulation specific under Article 4(2)(a) of the basic Regulation, which provides that 'where the granting authority, or the legislation pursuant to which the granting authority operates, explicitly limits access to a subsidy to certain enterprises, such subsidy shall be specific'. Indeed, the subsidy schemes at issue have their legal basis in Chapter IV 'Tax Preferences' of the EIT. By its name and content, this chapter explicitly provides for specific preferential treatment which 'explicitly limits access to a subsidy to certain enterprises'. More specifically, as indicated in recital (934) of the provisional Regulation, Article 93 of the Implementation Rules for the Enterprise Income Tax Law clarifies that 'The important high and new technology enterprises to be supported by the state [shall satisfy certain] conditions', such as '1. Complying with the scope of the Key State Supported High and New Technology Areas'. As is clear from the above, all enterprises or industries are not eligible to benefit from the same preferential tax treatments. Consequently, the subsidies provided under these tax schemes were considered specific under Article 4(2)(a) of the basic Regulation.

(568) In addition, as mentioned in recital (942) of the provisional Regulation, certain companies benefitted from a reduced income tax rate on the basis of criteria related to their physical location, in particular if an enterprise is located in the Western region. In such case, the Commission considered that the tax scheme was specific under Article 4(3) of the basic Regulation as it was limited to certain enterprises located within a designated geographical region. Consequently, the subsidies provided under these tax schemes were considered specific under Article 4(3) of the basic Regulation.

(569) As far as the reference to certain companies that did not benefit from the reduced income tax rate is concerned, the Commission considered that certain conditions needed to be fulfilled in order to be eligible for the HNTE certificate. The fact that certain BEV producers did not fulfil all conditions or did not request the HNTE certificate does not show that this scheme is non-specific.

(570) Following definitive disclosure, the GOC also claimed that the Commission had not addressed the GOC's argument that the income tax reduction for HNTEs is not limited to a sufficiently discrete segment of the Chinese economy in order to qualify as 'specific' within the meaning of Article 2.1(a) of the SCM Agreement.

(571) The Commission highlighted that it addressed the same comment on specificity in recitals (567) and (568) of this Regulation.

(572) In the absence of further comments regarding the specificity, the Commission confirmed its findings in recitals (941) to (943) of the provisional Regulation.

(c) Calculation of the subsidy amount

(573) Following the definitive disclosure, the SAIC Group argued that a subsidy rate had been unduly reported for this subsidy scheme. This claim was accepted.

([97]) EU – Ripe Olives, EU First Written Submission, para. 190 and 193.
([98]) Appellate Body Report, US – Aircraft (Second Complaint), para. 753.

(574) In the absence of other comments, the Commission confirmed its findings with regard to the calculation of the subsidy amount for this programme as provided for in recitals (944) and (945) of the provisional Regulation.

(575) The subsidy rate established with regard to this subsidy during the investigation period for the sampled exporting producers amounts to:

Enterprise Income Tax ('EIT') reduction for High and New Technology Enterprises

Company name	Subsidy rate
BYD Group	0,36 %

3.8.2. *Preferential pre-tax deduction of research and development expenses*

(a) Legal basis

(576) In the absence of comments, the Commission confirmed its findings with regard to legal basis as provided for in recital (949) of the provisional Regulation.

(b) Findings of the investigation

(577) Following provisional disclosure, the SAIC Group indicated that it rejected the Commission's assumption that all research and development projects and the related tax exemptions relating to one of its entities concerned only the PUI. The SAIC Group claimed that no information or explanation was given with regard to the application of Article 28 and how the calculation of the subsidy amount was subsequently calculated with respect to the SAIC Group itself.

(578) The SAIC Group argued that the entity at stake submitted a R & D expenses and company tax agent report as an exhibit during the verification visit and that the tax agent report did not mention that the R & D expenses incurred were specific to the product under investigation. The SAIC group recalled that the share of ICE vehicles in the turnover of this entity should have been reflected in the calculation of the subsidy margin.

(579) The Commission disagreed with the SAIC Group's claim and noted that the company at stake had only provided part of the requested information, although readily available. Hence, it did not provide a complete copy of the requested tax agent report containing information relating to the R & D expenses and projects to which the deduction referred. More specifically, the SAIC Group refused to provide the requested information as noted in the jointly signed list of documents that were not provided in the course of the verification visit.

(580) Also, contrary to the SAIC Group's claim, the Commission provided the necessary explanation in the specific pre-disclosure documents, explaining that, in the absence of verified information pointing to the fact that the R & D expenses and projects related to other products and did not relate to the product under investigation, it had allocated the benefit on the BEV turnover. Consequently, the Commission considered that it had provided sufficient information regarding the underlying reasons on why and how it had applied facts available. The claim was therefore rejected and the findings as presented in recital (950) of the provisional Regulation are hereby confirmed.

(c) Benefit

(581) In the absence of comments, the Commission confirmed its findings with regard to benefit as provided for in recital (951) of the provisional Regulation.

(d) Specificity

(582) Following provisional disclosure the BYD Group contested the Commission finding in recital (952) of the provisional Regulation that the tax offset for R & D constitutes a preferential tax treatment based on the fact that the legislation itself limits the application of this measure only to enterprises that incur R & D expenses in certain high technology priority areas determined by the State, such as the BEV sector. The BYD Group argued that in the case of R & D expenses incurred by an enterprise when it conducts R & D activities, an extra 100 % of the amount of R & D expenses actually incurred shall be deducted before tax payment, and that all legal person enterprises within China can benefit from the offset.

(583) Following definitive disclosure, the BYD Group and the GOC reiterated that the income tax reduction for preferential pre-tax deduction for R & D expenses schemes are not specific within the meaning of Article 2.1(b) of the SCM Agreement as the eligibility criteria for the income tax reduction for HNTEs are based on objective criteria which are automatic and strictly adhered to so that the limitations spelled out in Chapter IV of the EIT are non-specific. Both parties also argued that, in the light of Article 30 of the EIT, Article 95 of Implementing Regulation of Enterprise Income Tax Law, and also Article 4 of Notice on Improving Reduction of R & D Development Expense this scheme is applicable to all types of manufacturing industries.

(584) The Commission did not agree with the GOC and the BYD Group's reading of the laws and implementing measures, which show that the programme is limited to certain sectors and enterprises supported by the GOC on the basis of criteria that do not appear objective or neutral, such as that they comply with the scope of the 'Key State Supported High and New Technology Areas'. As already stated in recital (941) of the provisional Regulation, this subsidy is specific within the meaning of Article 4(2)(a) of the basic Regulation, as it applies only to enterprises operating in certain high technology areas, such as the BEV industry. Moreover, Article 30 of China Enterprise Income Tax Law provides that R & D expenses incurred by enterprises in the field of development of new technologies, new product and new techniques may be additionally deducted at the time of calculating taxable income, Article 95 of the Implementation Rules for the Enterprise Income Tax Law explains what the deduction consists of, while Article 4 of the Notice on Improving Reduction of R & D Development Expenses lists the industries for which the pre-tax deduction is not applicable (such as tobacco manufacturing, lodging and F&B, wholesale and retail, real estate, leasing and commercial services, entertainment and any other industries stipulated by the Ministry of Finance and State Administration of Taxation). The Commission recalls that (a) it already analysed the Implementation Rules for the Enterprise Income Tax Law for its assessment of specificity in recital (934) of the provisional Regulation and recital (567) of this Regulation; (b) the evidence contained in the specific Articles and documents submitted by the BYD Group does not alter the findings of the Commission on specificity, and actually reinforces the fact that this scheme is not applicable to all industries. In particular, Article 30 of China EIT Law and Article 4 of the Notice on Improving Reduction of R & D Development Expenses show that this subsidy is specific, as it is applicable only to a certain number of industries, i.e. those operating on the development of new technologies, new product and new techniques, and not all companies can benefit from it. The Commission therefore considered this subsidy as countervailable. This claim was therefore rejected.

(585) Consequently, in the absence of additional comments, the Commission confirmed its findings with regard to specificity as provided for in recital (952) of the provisional Regulation.

(e) Calculation of the subsidy amount

(586) The subsidy rate of the SAIC Group regarding the pre-tax deduction of research and development expenses was updated as a consequence of the correction described in recital (652) of this Regulation.

(587) In the absence of any further comments, the Commission confirmed its findings with regard to the calculation of the subsidy amount as provided for in recital (953) and (954) of the provisional Regulation.

Preferential pre-tax deduction of research and development expenses

Company name	Subsidy rate
BYD Group	0,57 %
Geely Group	0,03 %
SAIC Group	1,47 %

3.8.3. *Dividends exemption between qualified resident enterprises*

(a) Legal basis

(588) In the absence of comments, the Commission confirmed its findings with regard to the legal basis as provided for in recitals (956) and (957) of the provisional Regulation.

(b) Findings of the investigation

(589) Following provisional disclosure, the GOC, the Geely Group, and the SAIC Group argued that there was no financial contribution in terms of revenue foregone because pursuant to Article 10(1) of the EIT law of China, income from equity investments paid to investors such as dividends and bonuses shall be deducted when calculating the taxable income in order to avoid double taxation. Consequently, the tax exemption in question does not constitute government revenue foregone and there is no subsidy within the meaning of Article 1.1 of the SCM Agreement. In addition, the GOC indicated that the Commission had not addressed this factual matter in its analysis. In parallel, the Geely Group also indicated that China's tax system is designed to stop double taxation and align with international norms.

(590) Although the Commission agreed that the elimination of double taxation is an internationally recognised tax practice, it does not apply equally across all countries. The GOC failed to show how the deduction in question avoids double taxation specifically (namely, by showing that the dividends subject to the exemption are taxed elsewhere and the rule only captures situations of double imposition). Also, the Commission also already concluded in recital (959) of the provisional Regulation that this scheme was a subsidy under Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation because there is a financial contribution in the form of revenue foregone by the GOC equal to the reduction in tax perceived, which confers a benefit to the companies concerned. The benefit for the recipients is equal to the tax saving.

(591) Following definitive disclosure, the GOC reiterated its claim that there was no revenue foregone and pointed to its questionnaire reply and Article 10(1) of the EIT where it indicated that 'dividends and bonuses paid to investors cannot be deducted from the taxable income' and that 'the subsidiary has already paid the corresponding enterprise income tax' before distributing the dividends. On these grounds, the GOC argued that 'in order to avoid double taxation, dividend, and bonus income is not subjected to corporate income tax for a second time' as 'the dividends and bonuses are distributed by resident enterprises after the tax on profits has already been paid.'

(592) After further analysis, the Commission confirmed its assessment that a subsidy exists in the form of a revenue foregone. In this regard, it reverted to Article 6(4) and 7 of the EIT. Whereas Article 6(4) of the EIT provides that dividends, bonus issues or other returns on equity investment are part of the total income of an enterprise, Article 7 does not list gains from dividends, bonus issues or other returns on equity investment as being part of non-taxable income according to the EIT. Therefore, the avoidance of double taxation is not automatic; i.e. dividends are part of the taxable income unless the provisions of Chapter IV 'Tax incentives' which defines the eligibility criteria for such exemption are applicable. On this basis, the Commission considered that Article 26 of EIT leads to the existence of a revenue foregone for the GOC and rejected this claim.

(593) Consequently, the Commission confirmed its conclusion described in recital (958) of the provisional Regulation.

(c) Benefit

(594) In the absence of comments, the Commission confirmed its findings with regard to benefit as provided for in recital (959) of the provisional Regulation.

(d) Specificity

(595) Following provisional disclosure the GOC and the SAIC Group argued that the Commission had not established that the alleged subsidy was limited to certain enterprises. It also argued that this alleged program was not specific as the criteria for the eligibility to the program are objective and apply horizontally with regard to all resident enterprises irrespective of the industries/products or geographical locations involved. The GOC and the SAIC Group reiterated that the Commission erroneously correlates Articles 25 and 26(2) of China's Enterprise Income Tax Law but, as also explained in the GOC's questionnaire response, Article 26(2) operates independently of Article 25. The SAIC Group objected to the findings mentioned in recital (960) of the provisional Regulation stating that the dividends exemption between qualified resident enterprises was *de facto* specific and therefore the subsidy scheme was not *de jure* specific. It also argued that Article 83 of the Implementation Regulations for the Corporate Income Tax Law clarifies that this program is open to all enterprises, as long as these gains are derived by a resident enterprise through direct investment in another resident enterprise. Following definitive disclosure, the GOC reiterated the same claim and indicated that that the program does not meet the specificity requirement of Article 2.1 of the SCM Agreement on the grounds that companies do not need to meet the requirement of Article 25 of the EIT.

(596) The SAIC Group also claimed that the case-law of the United States Court of International Trade had confirmed that the dividend exemptions between qualified resident enterprises program is open to all enterprises and industries who have investment gains derived from investing in other resident enterprises and is not expressly limited to a list of companies ([99]).

(597) The Commission disagreed with the GOC and SAIC Group's claims and maintained that Article 26(2) of the EIT is part of Chapter IV 'Tax Preferences', which provides for a number of *preferential* tax treatments that are exemptions to the general taxation rules. Furthermore, as explained in recital (957), Article 25 of the EIT, which stands as a chapeau for Chapter IV 'Preferential Tax Policies', provides that 'The State will offer income tax preferences to Enterprises engaged in industries or projects the development of which is specially supported and encouraged by the State'. In addition, Article 26(2) specifies that the tax exemption is applicable to income from equity investments between 'eligible resident enterprises', which appears to limit its scope of application to only certain resident enterprises. Therefore, the Commission considered that such preferential tax policy is limited to certain industries, which are specifically supported and encouraged by the State, such as the BEV industry, and is therefore specific within the meaning of Article 4(2)(a) of the basic Regulation. This is also confirmed by the English copy of the income tax return (form A107010, line 3) submitted by several sampled Groups which reads '(II) Dividends, bonuses and other equity investment income between qualified resident enterprises is exempted from enterprise income tax (4 + 5+6 + 7+8)' in the Chinese version of the tax declaration, in this respect.

(598) As far as the reference to the United States Court of International Trade is concerned, the Commission rejected such refence on the grounds that such jurisdiction is not part of the EU legal order. The Commission also noted that further to such publication, the US DOC still continued to find Article 26(2) of the Enterprise Income Law both *de jure* and *de facto* specific ([100]).

(599) On this basis, these claims were rejected and the conclusions drawn in recital (960) of the provisional Regulation were confirmed.

([99]) See Risen Energy Co., Ltd, plaintiff, JA Solar Technology Yangzhou Co., Ltd., et al., consolidated plaintiffs, v. United States, Consol. Slip Op. 23-148, https://www.cit.uscourts.gov/sites/cit/files/23-148.pdf.

([100]) Case #C-570-980, Administrative Review of the Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China, Decision Memorandum for the Final Results.

(e) Calculation of the subsidy amount

(600) The subsidy rate of the SAIC Group and the Geely Group regarding the dividends exemption between qualified resident enterprises was updated as a consequence of the correction described in recitals (652) and (654) of this Regulation respectively.

(601) In the absence of any further comments, the conclusions drawn in recitals (961) and (962) of the provisional Regulation were confirmed.

Dividends exemption between qualified resident enterprises

Company name	Subsidy rate
Geely Group	0,16 %
SAIC Group	1,06 %

3.8.4. *Accelerated depreciation of equipment used by High-Tech enterprises*

(602) In the absence of comments relating to this scheme, the conclusions drawn in recitals (963) to (967) were confirmed.

3.8.5. *Technology transfer revenue deduction*

(603) Following provisional disclosure in a general comment regarding technology transfer revenue deduction, the GOC indicated that the Commission did not provide the GOC with the opportunity to submit any information or comments on this programme during the investigation and verification phases of the procedure.

(604) However, the Commission does not consider this deduction as a new subsidy scheme. It is one of the tax deductions envisaged in the EIT Law for high and new technology enterprises. All the tax deductions under the EIT Laws were part of the investigation process as they were covered by the Notice of Initiation and the Initiation Document and memorandum.

(a) Legal basis, findings of the investigation, and benefit

(605) In the absence of comments, the conclusions drawn in recitals (969) to (971) of the provisional Regulation are confirmed.

(b) Specificity

(606) Following provisional disclosure the GOC claimed that the Commission did not specify the basis on which it considers this subsidy to be specific as Articles 4(2)(a) and 4(4)(a) of the basic Regulation invoked, establish completely distinct criteria of specificity.

(607) The GOC indicated further that this subsidy cannot be considered export subsidy withing the meaning of Article 4(4)(a) of the basic Regulation and Article 3.1(a) of the SCM Agreement as it is not contingent upon and tied to exportation of the goods being investigated.

(608) Furthermore, the GOC argued that the Commission had provided no evidence that the deduction in question was limited to specific enterprises or certain industries. Following definitive disclosure, it added that this program was neither *de jure* nor *de facto* specific as enterprises involved in transfer of technologies across the entire Chinese economy are eligible.

(609) The GOC argued that the Commission had not demonstrated that the technology transfer revenue deduction was contingent on export performance and that it had failed to address the GOC's comments that the scheme is not contingent upon and tied to exportation of the goods being investigated in the first instance. In addition, the GOC argued that Article 3.1(a) of the SCM Agreement does not cover services, i.e. technology, which fall outside the purview of the SCM Agreement.

(610) First, the Commission considered this deduction specific on the basis of Article 4(2)(a) of the basic Regulation as this deduction is explicitly limited to enterprises involved in transfer of technologies.

(611) Furthermore, the respective Notice No 212 of 2009 ([101]) does not provide for objective criteria of eligibility clearly set up by law and capable for verification which would be neutral, economic in nature and horizontal in application. The Notice refers to additional discretionary criteria of eligibility such as:

— transferred technology has to be within the (non-specified) scope of technologies, which is to be decided by the Ministry of Finance and the State Administration of Taxation,

— requested 'recognition of transfer' by the (non-specified) science and technology authorities of provincial level and above,

— requested 'recognition of transfer overseas' by the (non-specified) commerce authorities of provincial level and above,

— other criteria stipulated by the tax authorities of the State Council.

(612) The Commission also referred to Article 4(4)(a) of the basic Regulation and *de jure* specificity as the Commission could establish that as for the companies where the tax deduction in question was countervailed, the benefit was contingent upon the export performance of the companies.

(613) The Commission referred to recital (968) of the provisional Regulation where it established that the tax offset for technology transfer entitled companies to preferential tax treatment for their export activities. Such fact is also based on the information shared by the company at stake, i.e. 'Transfer technology deduction is for the technology transferred abroad.', as reported in the mission report shared with this company and not disputed. On this basis, this claim was rejected.

(614) On this basis, these claims were rejected and the conclusions drawn in recital (972) of the provisional Regulation were confirmed.

(c) Calculation of the subsidy amount

(615) Following provisional disclosure the Geely Group indicated possible error in the calculation of the subsidy rate concerning this deduction. Specifically, the company claimed that benefit should be calculated for the investigation period, and not for the financial year 2022.

(616) As was done for other income tax schemes, the Commission relied, in the calculation of all the tax revenue benefits, on the 2022 income tax return as the benefit derived from such programs fell within the investigation period and the documents relating to the year 2022 were the last ones available to the Geely Group until the end of the verification process. Therefore, the claim was rejected and the conclusions drawn in recitals (973) to (974) of the provisional Regulation were confirmed.

Technology transfer revenue deduction

Company name	Subsidy rate
Geely Group	0,05 %

([101]) Notice of State Administration of Taxation on Issues relating to Exemption and Reduction of Enterprise Income Tax on Income from Technology Transfer.

3.8.6. *Battery consumption tax exemption*

(a) Legal basis

(617) In the absence of comments on the legal basis, the conclusions drawn in recitals (976) to (978) were confirmed.

(b) Findings of the investigation

(618) In the absence of comments on the findings of this investigation, the conclusion drawn in recital (979) was confirmed.

(c) Benefit

(619) Following provisional disclosure, the GOC alleged that the Commission did not establish the existence of a financial contribution within the meaning of Article 1.1(a)(1)(ii) of the SCM Agreement, and that no revenue was foregone due to the fact that it is a general norm not to apply consumption tax on a wide array of products in China. This claim was reiterated after definitive disclosure, when the GOC cited the Appellate Body Report on *US – FSC*, para. 90, stating that the basis for comparing what would otherwise have been due 'must be the tax rules applied by the Member in question'. The GOC explained that in this context, as only a small subset of luxury and polluting products are subject to the consumption tax under China's tax rules, and batteries are thus excluded, there is not tax obligation in the first, and therefore no tax exemption.

(620) The Commission disagreed with these statements. The GOC claim that 'it is general norm' not to levy the consumption tax on a wide array of product was general and unsubstantiated. In contrast, as explained in recital (976) of the provisional Regulation, the programme has its basis on specific rules concerning batteries and coatings. The GOC failed to show that the same tax exemption is granted on the basis of objective criteria, and did not submit any evidence to corroborate its statements. In any event, the fact that consumption tax in China only includes luxury and polluting products does not contradict the Commission's conclusions. In addition, the legal basis for this exemption explicitly provides the imposition of consumption tax on some types of batteries, but this do not apply to all types, as it excludes lithium primary batteries and lithium-ion batteries from it (recital (977) of the provisional Regulation). Hence, the Commission deemed there was plenty of evidence to prove that this subsidy is specific. This claim was therefore rejected.

(621) In the absence of comments on the findings of this investigation, the conclusion drawn in recital (980) was confirmed.

(d) Specificity

(622) For the same reasons as those mentioned in recital (619) of this Regulation, the GOC argued that there could not be specificity within the meaning of Article 2.1 of the SCM Agreement. Following definitive disclosure, the GOC added that, for the reasons listed in recital (619) of this Regulation, there can be no specificity, and that the Commission has not demonstrated that this subsidy is provided only to sufficient limited group of enterprise or industries.

(623) The Commission considered that the legal basis of the programme covered in Section 3.8(6)(a) shows that batteries are subject to a consumption tax of 4 %, but lithium primary batteries and lithium-ion batteries are exempted from the collection of the consumption tax, fulfilling both the criteria set out in Article 1.1(a)(1)(ii) and Article 2.1 of the SCM Agreement. Thus, the Commission considered this subsidy as specific.

(624) In the absence of further comments, the conclusion drawn in recital (981) was confirmed.

(e) Calculation of the subsidy amount

(625) Following provisional disclosure, the BYD Group argued that the Commission calculated the benefit twice for some inter-company purchases of battery packs. The claim was accepted, and the calculations were changed accordingly.

(626) The revised subsidy rate established for this specific scheme was 1,33 % for the BYD Group.

(627) In the absence of further comments, the conclusions drawn in recitals (982) to (983) was confirmed.

Battery consumption tax exemption

Company name	Subsidy rate
BYD Group	1,33 %

3.8.7. *Enterprise Income Tax ('EIT') reduction for key industries*

(628) The individual examination of Tesla (Shanghai) showed that a reduction of the EIT exists for key industries, constituting a subsidy in the form of revenue foregone by the GOC.

(a) Legal basis

(629) The legal basis of this programme is the announcement of the State Tax Administration of Shanghai Municipal Finance Bureau of Shanghai Municipal Economic and Information Technology Commission, (No 70 of 2020).

(630) The announcement clearly specifies that the reduced enterprise income tax rate is reserved to key industrial enterprises.

(b) Findings of the investigation

(631) Following the individual examination of Tesla (Shanghai), the Commission found that Tesla (Shanghai) qualified as a key industrial enterprise during the investigation period and enjoyed a reduced EIT rate of 15 %.

(c) Benefit

(632) The Commission considered that the tax offset at issue is a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation because there is a financial contribution in the form of revenue foregone by the GOC that confers a benefit to the companies concerned. The benefit for the recipients is equal to the tax saving.

(633) Tesla (Shanghai) claimed that the programme awarding a 15 % preferential tax rate to Tesla (Shanghai) has now been terminated and that, therefore, it cannot be countervailed. The underlying legal basis, and the quarterly advance payment tax declaration from Q1 2023 and Q1 2024 were submitted as supporting evidence.

(634) The Commission highlights that, while the quarterly advance payment tax declaration from Q1 2024 shows that the company is subject to a tax rate of 25 %, the quarterly tax declarations are not definitive and only relate to pre-payments. Therefore, this does not prejudge the fact that Tesla (Shanghai) could be awarded again, at a later stage and on a retroactive basis, the 15 % preferential tax rate. In fact, the evidence submitted awarding a preferential tax rate of 15 % to Tesla (Shanghai) was dated 19 January 2021, but was retroactively applicable to Tesla (Shanghai) from 1 January 2020 ([102]). Therefore, it is reasonable to assume that Tesla (Shanghai) could be subsequently awarded the 15 % preferential tax rate with retroactive application. Given the lack of conclusive evidence that Tesla (Shanghai) would not be eligible again for such preferential tax rate, the claim was rejected. Moreover, the preferential tax rate of 15 % was awarded in accordance with the provisions contained in the 'Notice of the MIIT and the State Taxation Administration on Corporate Income Tax Policies for Key Industries in Lingang New Area of the China (Shanghai) Pilot Free Trade Zone' ([103]) and in accordance with the requirements of the 'Administrative Measures for the Qualification Recognition of Enterprise Income Preferential Policies for Key Industries in the Lingang New Area of the China (Shanghai) Pilot Free Trade Zone' ([104]). There is no evidence showing that Tesla (Shanghai) does not qualify anymore as a key industry in the Lingang Area and that it would thus not be eligible for subsequent rounds of preferential fiscal policies.

(635) Following definitive disclosure, Tesla Shanghai submitted that Commission's analysis carried out in recital (460) of the General Disclosure Document was unfounded, as the preferential tax rate of 15 % was awarded in accordance with the provisions contained in the 'Notice of the MIIT and the State Taxation Administration on Corporate Income Tax Policies for Key Industries in Lingang New Area of the China (Shanghai) Pilot Free Trade Zone', which state that qualified legal enterprises shall be subject to a preferential tax rate of 15 % for five years from the date of establishment. As Tesla Shanghai was established in 2018, the preferential tax rate was applicable until 2023. In view of this, the company submitted that there was conclusive evidence that the company would not be eligible again for the preferential tax rate under the EIT reduction scheme.

(636) The Commission disagreed with these claims and highlighted that the company did not submit any piece of evidence that would show it would not benefit again, in any form, of preferential fiscal policies. As shown during the investigation, the different sampled companies benefitted from different tax preferential schemes, such as the Enterprise Income Tax ('EIT') reduction for High and New Technology Enterprises (HNTEs) for BYD. Moreover, the Commission recalled that in past investigations, it found instances of similar tax schemes being further extended ([105]). Therefore, the claim was rejected.

(637) Moreover, Tesla Shanghai added that, if this scheme were to be countervailed, the calculation should rely on the tax declaration during the investigation period, instead of the tax declarations of 2022. Tesla Shanghai highlighted that, in the investigation period, pre-payment tax declarations for the first three quarters of 2023 have been submitted in previous exhibits, and thus the Commission should use that information to calculate the benefit.

([102]) A list of eligible enterprises is available online at http://www.jiyu-ip.com/index.php/Index/newsDeil/id/767.
([103]) https://shanghai.chinatax.gov.cn/zcfw/zcfgk/qysds/202012/t456327.html.
([104]) https://shanghai.chinatax.gov.cn/zcfw/zcfgk/qysds/202011/t455875.html.
([105]) Commission Implementing Regulation (EU) 2015/1519 of 14 September 2015 imposing definitive countervailing duties on imports of biodiesel originating in the United States of America following an expiry review pursuant to Article 18 of Council Regulation (EC) No 597/2009 (OJ L 239, 15.9.2015, p. 99); Commission Implementing Regulation (EU) 2021/1267 of 29 July 2021 imposing definitive countervailing duties on imports of biodiesel originating in the United States of America following an expiry review pursuant to Article 18 of Regulation (EU) 2016/1037 of the European Parliament and of the Council (OJ L 277, 2.8.2021, p. 62).

(638) The Commission highlighted that, as explained in recital (442) of the General Disclosure Document, the Commission relied, in the calculation of all the tax revenue benefits on the 2022 income tax return, as the benefit derived from such programs fell within the investigation period (which includes the last quarter of 2022). This was done also for other tax schemes. A different approach would also have led to discrimination between the sampled exporting producers and Tesla Shanghai, which was granted individual examination, and whose verification visit took place months after the verification visits of the sampled exporting producers. Moreover, the Commission recalled that the verification visits of the samples exporting producers took place earlier than the verification at Tesla Shanghai, and thus their definitive tax returns for 2023 were not yet available. Therefore, the claim was rejected.

(d) Specificity

(639) This subsidy is specific within the meaning of Article 4(2)(a) of the basic Regulation as the legislation itself limits the application of this scheme only to certain key enterprises that are operating in a certain area determined by the State. Tesla (Shanghai) was clearly identified in the list of eligible companies.

(640) Thus, the legislation pursuant to which the granting authority operates, explicitly limits access to a subsidy to a certain sector and a geographical region.

(e) Calculation of the subsidy amount

(641) The amount of countervailable subsidy was calculated in terms of the benefit conferred on the recipients during the investigation period. This benefit was calculated as the difference between the total tax payable according to the normal tax rate and the total tax payable under the reduced tax rate.

(642) The subsidy rate established for this specific scheme was 0,66 % for Tesla (Shanghai).

EIT reduction for key industries

Company name	Subsidy rate
Tesla (Shanghai) (individual examination)	0,66 %

3.8.8. *Subsidisation as regards non-cooperating companies (SAIC Group)*

(643) Following provisional disclosure, the SAIC Group disagreed with the application of Article 28 of the basic Regulation to the R & D companies which did not provide questionnaire replies as mentioned in recitals (985) to (988) of the provisional Regulation. It argued that the application of facts available should have been based on an R & D company of the SAIC Group. In particular, it argued that the verified SAIC Group company had not benefitted of the same subsidy schemes as the Geely companies which the Commission used as facts available. It also argued that the SAIC Group company that provided a questionnaire reply duly reported the amount of grant programs based on its accounts.

(644) Regarding the input supplier that failed to provide a questionnaire reply, the SAIC Group also argued that the Commission should follow a similar approach as for the R & D companies as set out in recital (989) of the provisional Regulation, i.e. to adjust the subsidy amounts for (i) preferential financing; (ii) grant programmes; and (iii) provision of land-use rights for less than adequate remuneration.

(645) As already mentioned in recital (988) of the provisional Regulation, the Commission could only partially verify the information submitted by the related R & D company that provided a questionnaire reply. Hence, the Commission considered that this information was not reliable to be used as a basis for the application of facts available with regard to the other R & D companies. The Commission decided to rely on the amount of subsidisation established for the verified R & D companies within the Geely Group as reasonable facts available. It thereby considered that relying on the partially verified information of only one R & D company in the SAIC Group without having information on R & D companies that did not provide a questionnaire reply would not be representative to establish the amount of subsidisation. The SAIC Group did not show how the use of those facts would be manifestly inappropriate. This claim was therefore rejected. On these same grounds, the Commission also dismissed the SAIC Group's claim regarding this input supplier.

(646) In the absence of further comments, the Commission confirmed its findings as presented in recitals (985) to (989) of the provisional Regulation.

(647) The subsidy rate established for this specific scheme was 0,62 % for the SAIC Group.

3.9. **Other schemes**

(648) In the absence of new elements regarding the programmes listed in recital (990) of the provisional Regulation, and as a matter of administrative economy, the Commission did not consider it appropriate to conclude on the countervailability of these programmes. This is without prejudice to the Commission examining those measures on the occasion of future reviews.

3.10. **Conclusion on subsidisation**

3.10.1. *Allocation method*

(649) Following provisional disclosure, the SAIC Group claimed that the Commission had departed from its established practice when it allocated 100 % of the alleged subsidy schemes provided by the holding/financial companies and certain domestic-selling entities to calculate the total benefit amount.

(650) The SAIC Group stated that conducting accurate and realistic pass-through assessments was incumbent on the investigating authority to ensure, in accordance with Article 1 of the basic Regulation, that '[a] countervailing duty may be imposed for the purpose of offsetting any subsidy granted, directly or indirectly, for the manufacture, production, export or transport of any product whose release for free circulation in the Union causes injury'. Indeed, any subsidy granted for the manufacture, production, export or transport of any product which has not been released for free circulation in the EU cannot be countervailed. This required the Commission to determine which part of an alleged subsidy benefited the exported product and which part of the alleged subsidy benefited other products, and to also demonstrate that the recipient of the subsidy (where it is different to the exporting producer) passed through the benefit to the exporting producer during the investigation period ([106]). The SAIC Group submitted in particular that the amount passed through should be limited to the percentage of the shareholding ultimately held by the SAIC Group. Consequently, the SAIC Group claimed that the financial contributions granted to:

— Joint venture ('JV') manufacturers could not be automatically transferred onto EU exports, in particular, those non-Chinese automotive powerhouses. In addition, these JV manufacturers produced and sold the PUI solely on the domestic market and therefore, it could be assumed that the subsidies received by these JV manufacturers are not automatically transferred within the SAIC Group.

— Domestic traders could not be passed through to the export market by default, considering that there is no overlapping between these two sales chains. Any subsidies received by the domestic trader were for the sales of these companies in the domestic market.

([106]) WTO Appellate Body Reports, US – Softwood Lumber IV, paras. 140-143; US – Washing Machines, para. 5.268.

— Domestic Consumers for the purchases of BEVs in the domestic market could not be passed through to the export market as exports of BEV were not taken into account throughout this scheme. Therefore, any subsidies received under this scheme could not be passed through the EU export market by default.

(651) Following definitive disclosure, the SAIC Group reiterated that the analysis concerning the joint ventures and the related companies assessments should be re-evaluated. It added that the Commission should first determine what the 'missing information' is and apply facts available under Article 28 of the BASR. In this regard, the SAIC Group requested an examination of the level of deficiencies on a company-by-company basis. Then the Commission should determine the passed-through amount of benefit.

(652) The Commission confirmed its assessment made at provisional stage. First, as mentioned in recital (337) and (338) of the provisional Regulation and as illustrated in the letter sent to the SAIC Group on letter of 15 February 2024 ([107]), the Commission provided a company-per-company assessment of the information that was missing and gave the SAIC Group the opportunity to provide the missing information. However, the SAIC Group refrained from providing such missing information. Furthermore, the Commission considered that, in view of the relationship among the companies within the SAIC Group, a pass-through analysis was not required; rather, the Commission needed to use a proper allocation method as far as subsidies are concerned on the grounds that money is fungible and can be transferred from one related entity to another regardless of the market where sales are taking place. Furthermore, in the calculation of the percentage of subsidisation allocated to the product concerned (allocation key), the Commission indeed examined already the individual situation of each company in the group. For companies providing financial services within the SAIC Group, the Commission took into account the activities of these financial companies within the group. Concerning domestic transactions, the Commission took the corresponding relevant turnover into account which also included the turnover of companies operating exclusively on the Chinese domestic market. On this basis, this claim was rejected.

(653) Following provisional disclosure, the Commission corrected the SAIC Group turnover used for the proper allocation of the subsidies found in order to calculate the Group's amount of subsidization. The details were provided in the specific disclosure of 20 August 2024 to the company.

(654) Following definitive disclosure, the Commission further corrected the SAIC Group turnover by including the turnover generated by other branches within one of the exporting companies. The details were provided in the specific disclosure of 9 September 2024 to the company.

(655) Following provisional disclosure, the Commission corrected the value of the Geely Group's sales to the Union used for the proper allocation of the subsidies found in order to calculate the Group's amount of subsidization. The details were provided in the specific disclosure to the company.

(656) Following provisional disclosure, the Geely Group asserted that the turnover of suppliers, R & D, sales, and financing companies should be included in the total turnover for determining the total benefit amount.

(657) The Commission noted, as explained in the provisional disclosure, that as a first step, the calculated amount of subsidization for each related company had been allocated to the product concerned based on the company's category or the specificity of the subsidy line. Consequently, the turnover ratio for sub-assemblers, R & D companies, and sales companies was applied. In the second step, the benefit for the Geely Group was expressed in terms of BEV turnover of the exporting/domestic producers within the Geely Group—specifically, the BEV turnover to unrelated clients sold via related Geely Group entities. The claim was therefore rejected.

([107]) t24.001622.

3.10.2. *Duty applicable to other cooperating companies*

(658) Following definitive disclosure, the GOC and GWM indicated that the duty rate applicable to cooperating non-sampled companies increased following provisional disclosure, while the duty rates for the sampled companies decreased.

(659) Following provisional disclosure, the Commission noticed that the calculation of the weighted average duty rate applicable to cooperating non-sampled companies was incorrect as it did not weigh the sampled cooperating companies properly for certain schemes. Consequently, the Commission completed a technical correction which led to an increase of the duty applicable to cooperating non-sampled companies (other cooperating companies).

(660) Following definitive disclosure, the GOC requested the Commission to disclose the factual basis underlying the subsidy rate established for the non-sampled cooperating companies considering that facts available were applied for the calculation of the amount of subsidisation for SAIC.

(661) In accordance with Article 15(3) of the basic Regulation, the total subsidy amount for the cooperating exporting producers not included in the sample was calculated on the basis of the total weighted average amount of countervailing subsidies established for the cooperating exporting producers in the sample with the exclusion of negligible amounts as well as the amounts of subsidies established in the circumstances referred to in Article 28(1) of the basic Regulation. However, the Commission did not disregard findings partially based on facts available to determine those amounts. Indeed, the Commission considers that the facts available used in those cases did not affect substantially the information needed to determine the amount of subsidisation in a reasonable manner, so that exporters who were not asked to cooperate in the investigation will not be prejudiced by using this approach ([108]). In particular, the Commission observed that the financial instruments such as ABS or bonds on which it relied to calculate the benefit derived from such schemes were broadly used by the BEV industry in general and not exceptional. Had the exporting producers reported such information to the Commission when cooperating fully, the Commission would have treated the information in a similar way in terms of subsidy margin calculation.

(662) This means that to calculate the subsidy rate for the non-sampled cooperating exporting producers, the subsidy rates established for the provision of batteries for less than adequate remuneration, and the subsidisation as regards non-cooperating companies for the SAIC Group, and the direct grants provided to the Geely Group and the SAIC Group were not taken into account.

(663) Following definitive disclosure, Company 24, the GOC and VDA argued that the weighted average subsidy rate established for the non-sampled cooperating companies should also include the subsidy rate of Tesla (Shanghai), because it was the largest exporting producer of Chinese BEVs during and after the IP. According to the GOC including the subsidy rate of Tesla (Shanghai) in the calculation of the weighted average subsidy duty rate for the non-sampled cooperating companies would not be inconsistent with Article 15(3) of the basic Regulation.

(664) Company 24 argued in particular that the provisions of Article 27(1) of the basic Regulation do not exclude that an exporting producer not initially selected might then subsequently form part of the sample. This party argued that sampling is applied to limit the investigation to a reasonable number of parties, products or transactions or to the largest representative volume of production, sales or exports which can reasonably be investigated within the time available. According to this party, when individual examination is granted under Article 27(3) of the basic Regulation, the Commission could establish its findings in respect of the largest possible volume of production, sales or exports which can be investigated within the time available and thus include Tesla (Shanghai) in the calculation of the weighted average subsidy margin.

([108]) See also, mutatis mutandis, WT/DS294/AB/RW, US – Zeroing (Article 21.5 DSU), Appellate Body Report of 14 May 2009, paragraph 453.

(665) The Commission did not contest the fact that Tesla (Shanghai) was one of the largest exporting producers. However, as set out in recitals (57) and (59) of the provisional Regulation, the Commission considered its selection of the sample of three different exporting groups to be the largest representative volume that could reasonably be investigated within the time available, for which it did not solely look at absolute figures of production, sales, and exports, but considered a number of additional elements to assess the representativity of the sample, including the variety of BEV models sold in different market segments, the representativity of the companies/groups in terms of potential eligibility of the schemes included in the Memorandum on sufficiency of evidence, and overall production capacity including spare capacity based on the information provided in the sampling form.. It follows that contrary to what the GOC claimed, the sample in subsidies investigations in general and in this specific investigation is also based on other factors than production or export volumes such as the representativity of subsidisation and not (only or mainly) on volumes. This investigation confirmed that Tesla (Shanghai) is a unique company that is not representative of the level of subsidisation of other BEV producers in China.

(666) As far as Company 24's specific claim is concerned, the Commission considered that Article 27(1) provides that sampling may be applied when the number of exporters is large, which was the case based on the number of replies received at the time of the selection of the sample. Furthermore, as set out in recitals (57) and (59) of the provisional Regulation, the Commission considered its selection of the sample of three different exporting groups to be the largest representative volume that could reasonably be investigated within the time available. The fact that Tesla (Shanghai), the only company so requesting it, was granted individual examination under Article 27(3), on the grounds that its examination was not considered unduly burdensome, does not alter the conclusion that the sampling was representative. Furthermore, the provisions of Article 27(3) do not provide for the inclusion of companies granted individual examination in the sample.

(667) On this basis, it considered that the sample was also the most representative to be used to calculate the duty for non-sampled cooperating parties, in line with Article 15(3) of the basic Regulation and rejected the claim.

3.10.3. *Calculation of subsidy rates*

(668) Based on the information available, the Commission calculated the amount of countervailable subsidies for the sampled exporting producers in accordance with the provisions of the basic Regulation by examining each subsidy or subsidy programme, and added these figures together to calculate a total amount of subsidisation for each exporting producer group for the investigation period. To calculate the overall subsidisation below, the Commission first calculated the percentage subsidisation, being the subsidy amount as a percentage of the company's total turnover. This percentage was then used to calculate the subsidy allocated to exports of the product concerned to the Union during the investigation period. The subsidy amount per piece of product concerned exported to the Union during the investigation period was then calculated, and the rates below calculated as a percentage of the Costs, Insurance and Freight ('CIF') value of the same exports per piece.

(669) In accordance with Article 15(3) of the basic Regulation, the total subsidy amount for the cooperating exporting producers not included in the sample was calculated on the basis of the total weighted average amount of countervailing subsidies established for the cooperating exporting producers in the sample with the exclusion of negligible amounts as well as the amounts of subsidies established in the circumstances referred to in Article 28(1) of the basic Regulation. However, the Commission did not include the amount of countervailing subsidies in the weighted average calculation for those schemes and companies where findings were partially based on facts available to determine those amounts, as set out in recital (661) of this Regulation.

(670) Following definitive disclosure, the GOC requested the Commission to disclose the basis underlying the subsidy rate for the non-sampled cooperating companies. The Commission explained its calculation of the weighted average in recital (661) of this Regulation. Moreover, the Commission also provided a non-confidential version of the underlying calculation. In accordance with Article 29(4), the Commission used ranges for the CIF values in order to protect the confidentiality of the data provided by the sampled exporting producers.

(671) On the basis of the above, the definitive countervailing duty rates, expressed on the CIF Union border price, customs duty unpaid, should be as follows:

Company	Subsidy rate
BYD Group: — BYD Auto Company Limited — BYD Auto Industry Company Limited — Changsha BYD Auto Company Limited — Changsha Xingchao Auto Company Limited — Changzhou BYD Auto Company Limited — Fuzhou BYD Industrial Company Limited — Hefei BYD Auto Company Limited — Jinan BYD Auto Company Limited	17,0 %
Geely Group: — Asia Euro Automobile Manufacture (Taizhou) Company Limited — Chongqing Lifan Passenger Vehicle Co., Ltd. — Fengsheng Automobile (Jiangsu) Co., Ltd. — Shanxi New Energy Automobile Industry Co., Ltd. — Zhejiang Geely Automobile Company Limited — Zhejiang Haoqing Automobile Manufacturing Company Limited — Zhongjia Automobile Manufacturing (Chengdu) Co., Ltd.	18,8 %
SAIC Group: — SAIC MAXUS Automotive Company Limited — SAIC Motor Corporation Limited — Nanjing Automobile (Group) Corporation	35,3 %
Tesla (Shanghai) (individual examination)	7,8 %
Other cooperating companies	20,7 %
All other companies	35,3 %

4. **INJURY**

(672) Following provisional disclosure comments on injury were received from the CCCME, the GOC, the Geely Group, Company 18, Company 24 and the VDA.

(673) Following definitive disclosure comments on injury were received from the CCCME, the GOC, and CAAM.

4.1. **Definition of the Union industry and Union production**

(674) Following provisional disclosure, the CCCME and the GOC claimed that the Commission had not provided enough details concerning the definition of the Union industry and Union production. In particular, the CCCME and the GOC stated that 12 groups were mentioned in the Initiation Document while 10 groups were mentioned in recital (995) of the provisional Regulation stating that it was not clear whether any groups had been excluded from the definition of Union industry. The Geely Group also stated that in the provisional Regulation the Commission did not provide any explanations regarding the composition of the Union industry, beyond the statement that it consisted of 10 producers.

(675) The Commission hereby clarified that out of the 12 groups mentioned in the Initiation Document, the Commission mentioned in recital (995) of the provisional Regulation 'around 10 groups' following publicly available information that the company Fisker went bankrupt at the beginning of 2024 ([109]). Furthermore, no additional details regarding Bollore Group were collected during the investigation to confirm if Bollore Group was indeed manufacturing BEVs in the Union.

([109]) https://www.electrive.com/2024/05/08/fisker-faces-insolvency-in-austria/

(676) The Commission further clarified that as explained in recital (999) of the provisional Regulation, in defining the Union industry and Union production, the Commission did not focus on brands or original equipment manufacturers ('OEM') groups, but on the origin of production of BEVs, as production of BEVs taking place in the Union. Therefore, the Commission included all Union production of BEVs (i.e. BEVs brought into existence or made in the Union) in its injury, causation and Union interest analyses. It follows that no groups were excluded from the definition of the Union industry.

(677) The Geely Group also argued that as the Commission defined the Union industry based on the location of production and not the nationality of the brand or groups, it skewed the injury analysis as it failed to take into account the role of Chinese imports attributable to the Union producers and Tesla.

(678) The injury analysis focused on the BEVs produced in the Union and therefore the injury indicators are based on the BEVs produced in the Union and not the BEVs imported from China by the Union producers as in that case the Union producers act as traders and not producers. Nevertheless, the Commission assessed the imports from China in recitals (998), (1132) to (1136), and Section 6.2.9 of the provisional Regulation. Therefore, the claim was rejected.

(679) The CCCME and the GOC further argued that it was not clear what the terms 'OEM producer' and 'transition from ICE to BEVs' meant in the context of the definition of the Union industry and that the proportion and relevance of the Union BEV industry in transition was not detailed in the provisional Regulation.

(680) In recital (995) of the provisional Regulation the Commission explained that most of the 10 groups of BEVs producers were OEMs of internal-combustion engine ('ICE') vehicles that were transitioning to the production of BEVs following the entry into force of Regulation (EU) 2019/631 setting the CO_2 emission performance standards for new passenger cars and vans. While it is not clear what kind of additional explanations the CCCME and the GOC was requesting in this regard, the Commission further explained that most of the 10 groups of Union BEVs producers, with the exception of Tesla and e.Go Mobile, were producers of ICE vehicles which following Regulation (EU) 2019/631 were replacing the production of ICE vehicles with the production of BEVs. The Commission referred to this transition process in order to give context and background to the injury analysis as the transitioning of the Union market from ICE vehicles to BEVs represents a relevant factor in this case which affects a number of indicators relating to the state of the industry as explained in recital (996) of the provisional Regulation. Furthermore, in Table 1 of the provisional Regulation, the Commission indicated the extent of the transition defined as registered BEVs as a percentage of all passenger vehicle registrations which increased from 5,4 % in 2020 to 14,6 % in the investigation period. Therefore, the claims were rejected.

(681) Despite the explanations provided in recitals (675) and (676) of this Regulation, following definitive disclosure the CCCME and the GOC reiterated their claim that the Commission did not provide sufficient explanations regarding matters of fact and law and determinations concerning the composition of the Union BEV industry. Furthermore, the CCCME and the GOC stated that all information about the Union industry's composition had been illegally kept confidential on the grounds of the anonymity granted to the Union industry producers and that the following information was not known: (i) the number of producers – and not only groups – comprising the Union industry, considering that only individual producers were sampled and the related party definition was not applied to the Union BEV producers for sampling and assessing core economic indicators such as sales prices, (ii) the level of cooperation of the Union industry; (iii) what is meant by and the relevance of OEM producers in the context of the Union industry, and (iv) the degree of transition of the various Union producers from the production of ICE vehicles to BEVs which cannot be obtained from the percentage of BEVs sold on the Union market.

(682) The Commission noted that the CCCME and the GOC was confusing the composition of the Union industry with the composition of the sample of Union producers. The Commission did not keep the composition of the Union industry confidential. In the Initiation document the Commission provided the list of the groups of Union producers and additional explanations were provided in recitals (675) and (676) of this Regulation. The Commission kept confidential the identity of the sampled Union producers due to the anonymity granted to the Union producers as explained in recitals (12) to (14) of the provisional Regulation. Furthermore, as the Commission provided the number and the names of groups of Union producers, it did not need to explain how many producing entities each group includes. Furthermore, the level of cooperation in the investigation has nothing to do with the definition of the Union industry and the Commission explained in recital (45) of the provisional Regulation that the level of cooperation in an investigation is required for the standing exercise only and as the current investigation was initiated *ex officio* the Commission did not need to disclose the level of cooperation. Furthermore, the relevance of OEM producers in the context of the Union industry and the degree of transition of Union cars producers was already explained in recital (680) of this Regulation. Therefore, these claims were rejected.

(683) Following provisional disclosure, the CCCME and the GOC also argued that the Prodcom data seemed unreliable, unverifiable and result oriented as (i) it was not reported per Member States or per company, (ii) it appeared to include all motor vehicles with electric propulsion (such as quadricycles or vehicles carrying more than nine passengers) and not merely BEVs subject to the investigation, (iii) it appeared to be estimated rather than actual amounts and (iv) the Commission did not explain how it assessed the origin of the BEVs. Furthermore, the CCCME claimed that the Commission did not explain which rules of origin it applied to ascertain the origin of the BEVs manufactured in the Union. Moreover, the CCCME and the GOC claimed that it was not clear how the Commission had the investigation period data from Prodcom as this data was not available to interested parties and the Prodcom data was available only for calendar years.

(684) The Commission used the data reported by Prodcom to establish the production volume as this was the best source publicly available for such information. While the data reported by Prodcom had been rounded by Prodcom in order to ensure confidentiality, in the absence of any other publicly available source, the Commission had no choice but to use Prodcom data. The Commission noted that the CCCME and the GOC, apart from criticising the reliability of the data, did not submit any alternative sources or figures. Furthermore, in order to ensure the reliability of the Prodcom data, the Commission verified the figures with the Prodcom staff of Eurostat ([110]). Eurostat provided assurances relating to the accuracy of the data for total production in the Union bearing in mind that the data for some Member States was not published for confidentiality reasons. Moreover, Prodcom, data was also crosschecked with other available sources as stated at recital (997) of the provisional Regulation, such as sampling replies and publicly available data on producing group websites. As regards the data for the investigation period, the Commission stated in the footnote 421 of the provisional Regulation that the production data for 2023 will be publicly available on 1 July 2024. The production data for 2023 has been made available by Prodcom ([111]) which amounts to 1 720 329 units. As the data for the investigation period was not publicly available, the Commission calculated the production volume for the investigation period using 3 months data of 2022 and 9 months data for 2023. The result is 1 590 247 BEVs which is very close to the data reported in Table 4 of the provisional Regulation (1 626 263 BEVs).

(685) Furthermore, no adjustments were considered necessary to cover products outside the scope of the investigation such as quadricycles and vehicles carrying more than nine passengers, because (i) the production quantity data used from Prodcom reconciled with the production data reported in the sampling replies and publicly available sources and (ii) electric vehicles carrying more than nine passengers as well as electric vehicles designed for travelling on snow, golf cars and similar vehicles, are reported under different codes (29103000 and 29105200).

([110]) t24.007103.

([111]) https://ec.europa.eu/eurostat/databrowser/view/ds-056120__custom_12487127/default/table?lang=en.

In addition, the Commission had no data to suggest that production of such out of scope products was significant enough to warrant an adjustment, nor did the CCCME and the GOC submit such data. Moreover, it was noted that the Commission did not draw any conclusions specifically on the basis of the volume of production as the Commission concluded in recital (1167) of the provisional Regulation that a threat of injury and not material injury existed while the Union market was transitioning from ICE vehicles to BEVs as explained in recital (996) of the provisional Regulation, and the extent of the transition was established based on the volume of BEVs registered and not produced. In addition, in recital (999) of the provisional Regulation, the Commission specified that Union production included the BEVs brought into existence or made in the Union. The rules of origin would be relevant when, for example, a BEV is assembled in a third country with parts from China. Finally, it was clearly evident that the data of production reported by Prodcom was objective and not result oriented as the CCCME and the GOC claimed. Therefore, the claims were rejected.

(686) Following definitive disclosure, the CCCME and the GOC reiterated their claim that the production data reported by Prodcom was not verifiable. The CCCME also stated that instead the Commission should have obtained this information from the Union industry, ACEA or other national associations.

(687) The CCCME and the GOC did not explain why production data obtained from any alternative sources would be verifiable or otherwise more reliable than official data obtained from Prodcom, which are collected and disseminated irrespective of the investigation. Moreover, the allegation that Prodcom data are 'result oriented' is entirely unsubstantiated and unacceptable, even without considering that the data used for the injury analysis were produced before the investigation was initiated. In any event, the Commission indeed requested production data in the sampling form for the Union producers and the CCCME and the GOC was aware of this. Furthermore, the information reported by the cooperating Union producers was used to the extent possible as explained in recital (997) of the provisional Regulation. Moreover, not all Union producers of BEVs are members of ACEA and therefore ACEA could not have been able to submit complete data on production. As concerns the other national associations, the Commission considered it redundant to request such information from each association when it had access to Prodcom data. It is also recalled, for the sake of completeness, that the production data reported by Prodcom has been used before in other investigations ([112]). Therefore, this claim was rejected.

(688) Following definitive disclosure, the CCCME and the GOC claimed that the Commission had still not explained how it obtained quarterly Prodcom data as interested parties did not have access to such data.

(689) This claim is factually wrong. In recital (684) of this Regulation it was clearly explained that as the data for the investigation period was not publicly available, the Commission calculated the production volume for the investigation period using 3 months data of 2022 and 9 months data for 2023. The result was 1 590 247 BEVs which is very close to the data reported in Table 4 of the provisional Regulation (1 626 263 BEVs). Therefore, the claim was rejected.

([112]) Commission Implementing Regulation (EU) 2024/1896 of 11 July 2024 imposing a provisional anti-dumping duty on imports of certain polyvinyl chloride ('PVC') originating in Egypt and the United States of America (OJ L, 2024/1896, 12.7.2024, ELI: http://data.europa.eu/eli/reg_impl/2024/1896/oj).
Commission Implementing Regulation (EU) 2024/493 of 12 February 2024 imposing a definitive anti-dumping duty on imports of ceramic tiles originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L, 2024/493, 13.2.2024, ELI: http://data.europa.eu/eli/reg_impl/2024/493/oj).
Commission Implementing Regulation (EU) 2023/265 of 9 February 2023 imposing a definitive anti-dumping duty on imports of ceramic tiles originating in India and Türkiye (OJ L 41, 10.2.2023, p. 1).
Council Implementing Regulation (EU) No 412/2013 of 13 May 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ceramic tableware and kitchenware originating in the People's Republic of China (OJ L 131, 15.5.2013, p. 1).

(690) Following definitive disclosure, the CCCME and the GOC claimed that the Commission's argument that its threat of injury finding was not based on production and that the discussion of production is legally irrelevant, is incorrect and incoherent as (i) the definition of the domestic industry was the basis for the threat of injury and causation analyses it was therefore, a key element of the investigation, (ii) the production of the sampled Union producers versus the total Union industry production was a core element of the Commission's determination of the representativeness of the Union industry sample and (iii) several intermediate findings concerning the threat of injury determination (such as concerning the Union industry's economic situation, the calculation of the production capacity of the Union industry and employment), were based on or derived from the Union industry production data. Furthermore, the threat of injury assessment of the Commission also directly concerned the production found in the investigation period as the Commission stated that the Chinese BEV imports were jeopardizing the production and sales of the Union industry.

(691) Contrary to the CCCME and the GOC's claim, the Commission did not state that its threat of injury finding was not based on production and that the discussion of production was legally irrelevant. In fact, in recital (685) of this Regulation, the Commission stated that it did not draw any conclusions specifically on the basis of the volume of production, since it concluded in recital (1167) of the provisional Regulation that a threat of injury and not material injury existed while the Union market was transitioning from ICE vehicles to BEVs, and the extent of the transition was established based on the volume of BEVs registered and not produced. This is to say that whether the production of the Union industry was 1,2 or 1,3 million of BEVs in the investigation period this aspect did not have a material impact on the conclusions of the investigation, including on the specific elements highlighted by the CCCME. Therefore, the claim was rejected.

(692) Following provisional disclosure, the CCCME and the GOC also claimed that (i) the Commission did not assess whether any Union producers should be excluded from the definition of the Union industry and that some groups should in fact be excluded due to the fact that these groups had companies in China which exported BEVs to the Union market, (ii) some Union producers were not only related to the Chinese exporting producers, they were also reliant on Chinese BEVs, (iii) the fact that the Commission did not exclude from the definition of the Union industry certain groups that were importing BEVs from China, materially distorted the determination of the threat of injury, (iv) the Union groups of producers importing BEVs from China benefited from the supposed subsidisation in China which the Commission was addressing in the current investigation. The CCCME and the GOC further claimed that the Commission did not assess the percentage represented by the BEVs self-imports over the total BEVs sales per Union producer concerned even though this was generally the accepted and applied test by the Commission in assessing whether to include a Union producer with imports in the domestic industry definition as used in *Fatty acid from Indonesia* or in *Biodiesel from United States of America* investigations ([113]). The CCCME and the GoC further stated that in *OFC from China* ([114]) investigation the Commission excluded two Union producers from the definition of the Union industry in view of the significant quantities of imports by these companies from China, and their relationship with Chinese exporting producers.

(693) The Commission disagreed with these claims. In recital (998) of the provisional Regulation, the Commission explained that three producing groups (BMW, Renault and Mercedes-Benz) imported the product concerned from China during the period considered, mainly one model of BEVs from China each, and thus complemented their portfolio of BEVs that it manufactured in the Union and sold on the Union market. These producers imported a

([113]) Commission Implementing Regulation (EU) 2023/111 of 18 January 2023 imposing a definitive anti-dumping duty on imports of fatty acid originating in Indonesia (OJ L 18, 19.1.2023, p. 1) and Commission Regulation (EC) No 193/2009 of 11 March 2009 imposing a provisional anti-dumping duty on imports of biodiesel originating in the United States of America (OJ L 67, 12.3.2009, p. 22).

([114]) Commission Implementing Regulation (EU) 2022/72 of 18 January 2022 imposing definitive countervailing duties on imports of optical fibre cables originating in the People's Republic of China and amending Implementing Regulation (EU) 2021/2011 imposing a definitive anti-dumping duty on imports of optical fibre cables originating in the People's Republic of China (OJ L 12, 19.1.2022, p. 116).

quantity of around [4,7 – 5,7] % of the Union consumption in the investigation period as explained in Table 12 of the provisional Regulation. This volume of imports for three Union groups should be put into context of the total amount of imports from China. Furthermore, the Commission explained that Tesla imported significant quantities of BEVs from China and the volumes were reported as well as a percentage of the Union consumption in Table 12 of the provisional Regulation. Moreover, in recital (999) of the provisional Regulation, the Commission explained that in defining the Union industry and Union production, the Commission did not focus on brands or OEM groups, but on the origin of production of BEVs and therefore, the Commission included all Union production of BEVs (i.e. BEVs brought into existence or made in the Union) in its injury, causation and Union interest analyses. The CCCME and the GOC did not specify which Union producers should be excluded from the definition of the Union industry and on what grounds. In fact, the BEV market has been globalised to the extent that the exclusion of a Union producing group based on the fact that imports were made by other group companies was not considered appropriate in this case. Nor did any facts come to light to the extent that the exclusion of any particular producing group was warranted. To be noted that any impact on the injury analysis of a group importing from China BEVs would be on the micro indicators. However, since in this case the Commission sampled production entities, all micro indicators are based on the BEVs produced and sold in the Union. Moreover, in most cases, as the Union producers are part of large groups of companies, the BEVs are imported from China by different entities than the sampled production entity. Also, the Commission noted that the CCCME and the GOC did not explain how the assessment of the threat of injury was distorted as in recitals (1136) to (1138) of the provisional Regulation the Commission explained that it was likely that there will be an increase of market shares mainly from Chinese brands in the foreseeable future. Whether Tesla was included or excluded from the definition of the Union industry, did not have a material impact on the conclusion of the threat of injury assessment. This was due to the fact that the imports from Tesla (Shanghai) from China were not expected to increase significantly as the spare production capacity of Tesla (Shanghai) was very low, if any, as explained in recital (1137) of the provisional Regulation. As concerns the subsidisation of the Union producers, the CCCME and the GOC did not explain how this fact was relevant for the definition of the Union industry. Furthermore, it was noted that the countervailing measures were imposed on all BEVs imported from China, including the ones imported by the Union groups of producers. Therefore, the claims were rejected.

(694) Contrary to the CCCME and the GOC's claim, in *Biodiesel from United States of America*, the Commission did not assess the percentage of the imported product concerned over the total sales of product concerned per Union producer. In that investigation the Commission stated that three companies belonging to the same group were found to be related to exporting producers in the USA and the group was also itself importing significant quantities of the product concerned from its related exporters in the USA. Therefore, those companies were excluded from the definition of the Union production. In *Fatty acid from Indonesia*, the Commission carried out such assessment as the imports of fatty acid were made by the Union production entity. As explained in recital (692) of this Regulation, this is not the case in the current investigation. The Union BEV producers are part of large groups of producers with several entities and the BEVs are imported and sold by different entities than the ones that produce BEVs in the Union. The fact that in previous investigations some Union producers importing the product under investigation from the country concerned were excluded from the definition of the Union industry, does not mean that the Commission must exclude such producers automatically from the definition of the Union industry also in the present investigation. Such assessment is done on a case-by-case basis and considering on account of the factual elements of each investigation. Therefore, the claim was rejected.

(695) Following definitive disclosure, the CCCME and the GOC reiterated its claim that the Commission should have excluded the Union producers that imported BEVs from China in significant quantities from the definition of the Union industry such as Tesla, BMW and Renault. Furthermore, the CCCME and the GOC stated that the Commission's artificial distinction between sampled Union producer entities and Union BEV producing groups and the unclear statement, according to which the Chinese BEV imports were in most cases made by different entities in specific producer groups and supposedly not by the sampled entities is irrelevant, unobjective and incoherent. The CCCME referred in this regard to recital (833) of this Regulation, which stated that in view of the anonymity granted to the Union producers and the small number of groups of Union producers that imported BEVs from China during the period considered, the Commission could not disclose whether the sampled Union producers imported BEVs from China during the period considered. The CCCME and the GOC further stated that the Commission itself classified the BEV sales per Union producer group in its EEA registration data as well.

(696) The Commission maintained its views explained in recital (693) of this Regulation that the BEV market has been globalised to the extent that the exclusion of a Union producing group based on the fact that imports were made by other group companies was not considered appropriate in this case. Nor did any facts come to light to the extent that the exclusion of any particular producing group was warranted. Furthermore, the distinction between sampled Union producer entities and Union BEV producing groups was not artificial. It is the Commission practice to sample Union producers at the entity level and not group level. This is in contrast with the sample of the exporters where the Commission samples the exporters at group level due to the risk of circumvention of exports via the entity with the lower duty. Finally, contrary to the CCCME's statement the Commission did not classify the BEV sales per Union producer group in its EEA registration data. This information was reported by EEA. Therefore, the claims were rejected.

(697) Following definitive disclosure, the CCCME and the GOC claimed that the Union producers that imported significant BEVs from China should be excluded from the definition of the Union industry, since these imports – which were not temporary, had driven the Chinese BEV imports into the Union and accounted for the majority of the imports from China – were based on the Union producers' business strategy and long-standing relationships with Chinese BEV producers. Furthermore, the CCCME and the GOC stated that their inclusion in the Union industry skews the economic data pertaining to the Union industry, and the threat of injury assessment, given that the determination of increasing volume and market share of Chinese BEV imports is the cornerstone of the Commission's findings of: (i) likelihood of significantly increased BEV imports from China in the foreseeable future and (ii) Chinese BEV imports jeopardizing the Union industry sales, market share, and profitability in the investigation period and increased negative effects on the Union industry's BEV transition in the foreseeable future. The CCCME and the GOC further stated that without the inclusion of self-imports by the Union industry, the case of sharply increasing and high market share of the Chinese BEV imports and notably of the Chinese brand BEV imports could not have been made. Moreover, the CCCME and the GOC stated that the Commission did not consider in its assessment that fact that the self-imports were a significant part of several of the Union producer groups' production and sales strategy for their BEV sales portfolio in the Union and impacted the production, sales, market share as well as prices in the Union of these cars producers and their transition from the production of ICE vehicles to BEV in the Union. The Commission considered the self-imports only as traded products.

(698) The Commission disagreed with these claims. As it was explained in Section 5 of the provisional Regulation and Section 5 of this Regulation, the Commission concluded that in the current investigation there was threat of injury and not material injury. In an investigation that shows material injury, sampling a Union producer that imported the product concern from the country concern, might have an impact on the injury assessment and such assessment is made on a case-by-case basis. However, this is not the case in the current investigation which showed threat of injury.

(699) Furthermore, the findings of the threat of injury were not based on the future increase of imports made by the Union producers, if any, but on the imminent increase of imports of Chinese BEVs as it was explained in Section 5 of the provisional Regulation. This conclusion was also confirmed by the post-IP data that showed that imports of Chinese BEVs reached 14,1 % in the second quarter of 2024 (see Table 12 of this Regulation) as compared to 1,9 % in 2020. Furthermore, the Chinese BEVs producers have significant spare capacities that could use to manufacture BEVs to be exported to the Union market, while Tesla's imports from China will not significantly increase in the imminent future in view of its low spare capacity if any and production plant in Germany. As it was explained in recital (1136) of the provisional Regulation, in contrast with the high number of announcements made by the Chinese exporting producers, the Union ICE OEMs transitioning to production of BEVs did not announce any major plans to import BEVs from China. Most of them have one BEV model or brand that is imported from China. For example, Renault group imports from China only the Dacia Spring model which is different than the BEV models manufactured in the Union such as Renault Scenic, Renault Megane, Renault 5, Renault Zoe, and Renault Kangoo. The selling price of Dacia Spring does not have an impact on the price of the other models of Renault manufactured in the Union as those BEV models do not compete with Dacia Spring. Had the model Renault Spring been manufactured in the Union and not in China, this would have increased the production volume of Renault group and therefore of the Union industry. However, a higher volume of production in the Union would have not invalidate the findings of threat of injury of the investigation. Furthermore, had Dacia Spring been manufactured in the Union, it cannot be estimated what would have been the impact of costs, sales prices and profitability, as even if the unit production cost would have been lower for Renault models due to higher production volume and therefore covering a larger part of the fixed costs, it is

unlikely that the selling price of a Dacia Spring manufactured in the Union would be as low as the selling price of Dacia Spring manufactured in China. Therefore, assuming that the Commission would have sampled an entity that manufactured Dacia Spring in the Union, for the reason explained above, it cannot be concluded that the findings of the profitability of the Union industry would have been significantly different. Therefore, these claims were rejected.

(700) Following provisional disclosure the CCCME and the GOC also claimed that Union producing groups' imports of Chinese production were set to increase at the end of the investigation period and quoted examples as evidence of why this might be the case.

(701) The Commission took into account the examples mentioned in the CCCME and the GOC in recital (1136) of the provisional Regulation and concluded in recitals (1138) and (1139) of the provisional Regulation that it was likely that there would be an increase of market shares mainly from Chinese brands in the foreseeable future. The CCCME and the GOC did not bring any new information in this regard. In fact, the post-IP data (as defined in recital (939) of this Regulation) clearly shows an increase in the market share from the Chinese brands as shown in Table 13 of this Regulation. Therefore, the claim was rejected.

(702) Following provisional disclosure the CCCME and the GOC also claimed that (i) the Commission had not explained what it had meant by the Union industry transitioning considering that the Union industry remained committed to the production of ICE vehicles, also manufactured hybrid vehicles among others and was also investing in other new technologies, (ii) the Commission referred to transition without any factual data and evidence when the Union producers are nowhere close to entirely switching from the production of ICE vehicles to BEVs, (iii) there was no evidence in the provisional Regulation that the Union industry was 'transitioning' and was 'still developing and not mature yet' and that the fact that the Union industry was continuing to invest was no evidence that the industry was transitioning, (iv) the Union producers had already transitioned as they had been exporting high volumes of BEVs for many years and they had the highest market share on the Union market, which they would not have if they were still transitioning, (v) the move to the production of BEV was not a transition but business expansion or diversification, which constituted a business choice for which neither the SCM Agreement nor the basic Regulation provide special rules or exceptions such that any aspect concerning higher costs, low profitability etc. can be attributed to the Chinese BEV imports.

(703) These claims are without merit. In recital (996) of the provisional Regulation the Commission stated that the Union market was transitioning from the ICE vehicles to BEVs, and this represented a relevant factor in this case which affected a number of indicators relating to the state of the industry. Moreover, contrary to CCCME and the GOC's claim, in recital (1194) of the provisional Regulation the Commission stated that the Union BEV market and not the Union producers was still developing and not matured yet. Furthermore, in Table 1 of the provisional Regulation, the Commission showed that in the investigation period BEVs represented 14,6 % of the Union passenger vehicles market. In recital (995) of the provisional Regulation, the Commission further explained that most Union producers were OEMs of ICE vehicles that were transitioning to the production of BEVs following the entry into force of Regulation (EU) 2019/631 setting the CO_2 emission performance standards for new passenger cars and vans. For the purpose of this investigation, the Union producers are the producers of the product under investigation, i.e. BEVs, and not producers of vehicles in general. The current regulatory framework in the Union effectively requires the Union producers of passenger vehicles to stop selling ICE vehicles on the Union market by 2035 as explained in recitals (1222) to (1223) of the provisional Regulation. The Commission also explained in recital (1224) of the provisional Regulation, that the CO_2 targets can be achieved through a growing proportion of electric vehicles in the fleet. Therefore, producing and selling more BEVs on the Union market is more than just a business expansion or diversification for the Union producers of passenger vehicles, it is in fact a legal obligation. Moreover, the fact that the Union producers had been exporting allegedly high volumes of BEVs for many years and they had the highest market share on the Union market was irrelevant in the context of the Union market transitioning from ICE vehicles to BEVs. Therefore, the claims were rejected.

(704) Following provisional disclosure, the CCCME and the GOC also claimed that the value of investments mentioned by the Commission in recital (1092) of the provisional Regulation and the source provided did not mention this amount.

(705) The Commission did not claim that this number was verified. In recital (1092) of the provisional Regulation, the Commission clearly stated that the investments linked to the transition to electrification was estimated to about EUR 170 billion between 2022 and 2030 and provided the source in footnote 432 and in PDF format as Annex 15 of the Initiation document. The source provided showed the investments of several vehicle producers, not only the Union producers of passenger vehicles. Therefore, the Commission summed up the investments reported for the Union producers of passenger vehicles, excluding investments clearly destined to geographical areas outside the Union (such as BMW's USD 1,7 billion investment to convert its South Carolina plant, or Volkswagen Group's USD 7,1 billion investment in North America and USD 17,5 billion investment in China). The approach taken was conservative since it considered only investments expressly directed to the Union, where a distinction was made. Thus, for example, the Commission took into account only USD 20 billion out of VW Group's USD 57 billion battery investments, only USD 1 billion out of Volvo's USD 3,75 billion of electric vehicle investments, and nothing of Tesla's USD 500 billion of overall investments, as it was not possible to identify the geographical area to which the investments were destined. In any case, for the sake of clarification, the precise calculation was disclosed in the open file on the day of definitive disclosure ([115]). Thus, this claim was rejected.

(706) The Commission, therefore, maintained that its provisional Regulation correctly identified all Union producing groups and used the most appropriate data sources to calculate Union production, meaning that its injury and causation analyses were all based on a sound definition of Union industry. The findings in recitals (995) to (999) were therefore confirmed.

4.2. **Determination of the relevant Union market**

(707) Following provisional disclosure Company 18 claimed that the Commission should take into account in its investigation the characteristics of the leasing market.

(708) The Commission clarified that as concerns volume of sales, the investigation covered all sales of the Union industry. However, as concerns prices, if the sampled Union producers were selling BEVs based on a leasing agreement, such sales could not be included in the price analysis as it would have distorted the average price analysis in view of the fact that the price of a car sold based on a leasing agreement was significantly different than the price of a car sold based on a normal selling agreement. Furthermore, the volume of such sales submitted by the sampled Union producers was found to be very small (less than 1 % of total sales in the investigation period) as in general the Union producers are not directly involved in sales based on a leasing agreement, but they are using a third party in this regard.

(709) Therefore, the Commission confirmed its conclusion set out in recital (1000) of the provisional Regulation.

4.3. **Union consumption**

(710) Following provisional disclosure, for the calculation of the apparent consumption, the CCCME and the GOC claimed that (i) it was not clear why EEA data were used along with S&P Global Mobility data and the Member States' customs data and how the three different data sets were adjusted/mixed/aggregated because, while EEA and S&P Global Mobility data were based on registrations, the Member State import data were based on pure customs clearance of the BEVs and cannot be correlated and could, for instance, result in double counting of imports, (ii) there was no explanation of the data sets and methodology on the basis of which the EEA data were assimilated and established, (iii) the Commission did not disclose the details of the S&P Mobility dataset that it used and (iv) the Commission did not disclose the basis on which the Chinese BEV import volumes based on registrations were derived from a mixture of EEA and S&P Global Mobility data.

([115]) t24.006738.

(711) The apparent consumption was calculated as the total sales of the Union industry and the total imports of BEVs. In recital (1002) of the provisional Regulation the Commission explained that the apparent consumption took into account (i) the total sales of the Union industry on the Union market as reported by the EEA for 2020, 2021 and 2022, and as reported by S&P Global Mobility for the investigation period since this information was not made yet publicly available by EEA by the time the provisional Regulation was published, and (ii) imports from Member States customs data. The Commission did not mix the data reported by EEA with the data of S&P Global Mobility. Furthermore, on the day of publication of the provisional Regulation (i.e. 4 July 2024), the Commission added to the non-confidential file of the investigation ([116]) the extraction of data from EEA with all the calculations made in order to identify the sales of BEVs of the Union industry and the Chinese exporting producers from the total sales of BEVs on the Union market in 2020, 2021 and 2022. The Commission could not disclose the data of S&P Global Mobility as it was copyrighted. Nevertheless, the CCCME seemed to have access to this or similar data as it used it in the confidential version of its submission.

(712) In addition, as the data for 2023 was made publicly available by the EEA, the Commission revised the data of the apparent consumption for the investigation period by using the data from EEA for the sales of the Union industry as explained in Table 1 in order to be able to disclose the underlying data, which was made available in the non-confidential file of the investigation ([117]) on the day of the disclosure.

Table 1

Union consumption (pieces)

	Investigation period
Apparent Union consumption	1 652 107
Index (2020 = 100)	*300*

Source: EEA and Member States Customs data.

(713) To be noted that there was an insignificant difference between the total apparent Union consumption using as source for the sales of the Union industry S&P Global Mobility (1 649 486 BEVs as stated in Table 1 of the provisional Regulation) as compared to EEA (difference of 0,16 %).

(714) Furthermore, as explained in recital (1002) of the provisional Regulation, customs data was collected from eight Member States with large volumes of imports and the largest regional seaports: Belgium, France, Germany, Italy, Netherlands, Slovenia, Spain and Sweden. The Commission examined this data at granular level which enabled the Commission to separate the imports of BEVs and imports of other goods such as quadricycles, electric mobility scooters etc. which were also imported via CN code 8703 80 10 but were not product concerned. Therefore, it was unclear why the CCCME and the GOC claimed that the data from the Member States customs could result in double counting of imports. Therefore, these claims were rejected.

(715) Following definitive disclosure, the CCCME and the GOC claimed that it could not understand how the Commission filtered down to the final registrations for Chinese BEV imports and split them into Chinese brand BEV imports and self-imports. The CCCME and the GOC further claimed that the data on the EEA website do not (i) provide the origin of the vehicles and (ii) directly permit a classification between products concerned and non-products concerned, and the Commission did not explain how it established the origin of the BEVs. The CCCME and the GOC claimed that it would appear that there were likely some non-products concerned included in the BEV registrations calculated by the Commission in the tables added to the non-confidential file. Furthermore, the CCCME and the GOC stated that the 2023 registrations data has a category 'EU/China' and it was not clear how that was to be understood and on what basis an estimation of Tesla's imports of Model Y for the three quarters of 2023 from China were made.

([116]) t24.005464.
([117]) t24.007104.

(716) The Commission clarified that it downloaded from the website of EEA the registration of BEVs in the category M1 which are for passenger cars. The commercial vehicles are categorised as N1. Therefore, the information added to the non-confidential file was only for passengers BEVs as reported by EEA. Certain models of BEVs have a passenger version and a commercial version, however the Commission used only the passenger BEVs as reported by EEA. Thus, 10 out of the 17 models mentioned by the CCCME existed as passenger vehicles as well as commercial vehicles. The remaining 7 models (out of which only one of them was manufactured in China) were indeed commercial vehicles, however their volume was very low and had no impact on the calculation of the market share.

(717) As concerns the origin of the BEVs, such information was indeed not available on the EEA database. Therefore, the Commission identified the origin of each BEV model based on public information (by searching on internet on various websites where each model of BEV was manufactured). Such task was possible as, with the exception of Model Y for Tesla, the registered BEVs during the period considered were manufactured either in the Union, China or third countries. In the data reported in the non-confidential file, the Commission classified Model Y as having the origin EU/China. Then based on the questionnaire reply of Tesla (Shanghai) the Commission was able to identify the volume of Model Y produced in China and registered in the Union in the three quarters of 2023.

(718) Following definitive disclosure, the CCCME argued that it was still not clear and not explained by the Commission why it calculated the actual consumption based on ACEA data and not EEA data which in turn was the basis for the calculation of the Union industry sales registration, and Chinese BEV sales registration on the EU market. Thus, for the calculation of the actual consumption-based market shares for the Chinese and EU producers, the Commission still uses two different data sets for the numerator and denominator. Moreover, for the purpose of the breakdown of the Chinese BEV imports in table 12a of the provisional Regulation, the Commission used the EEA data for the numerator and denominator.

(719) The Commission used ACEA as a source for the actual Union consumption as ACEA made public this information regularly on a monthly basis, while EEA made public the data for 2023 only in July 2024. However, there is only a minor difference between the actual consumption reported by ACEA versus EEA and therefore there is no material impact on the resulted market shares, as can be seen in the table below.

Table 1.1

Actual Union consumption – Comparison of ACEA and EEA data

Actual Union consumption	2020	2021	2022	Investigation period
Based on ACEA	538 734	877 985	1 123 444	1 519 082
Based on EEA	539 653	882 731	1 136 406	1 529 365
Difference	0,2 %	0,5 %	1,2 %	0,7 %

(720) For the purpose of the calculation of the breakdown of the Chinese BEV imports reported in Table 12a of the provisional Regulation, the Commission used as a denominator the actual consumption reported by EEA as the data for the numerator came also from EEA database and like this all data for the calculation of the market shares of the Chinese imports came from one database.

(721) Therefore, the conclusions set out in recitals (1001) to (1009) of the provisional Regulation as revised as explained in recital (711) of this Regulation were confirmed.

4.4. **Imports from the country concerned**

4.4.1. *Volume and market share of the imports from the country concerned*

(722) The insignificant revision of the apparent consumption, as explained in recitals (711) to (713) of this Regulation, did not have an impact on the market share of Chinese imports which remained 25,0 %, the same as in Table 2a of the provisional Regulation.

(723) As in the case of the data for the apparent Union consumption for the investigation period as explained in recital (710) of this Regulation, in order for the Commission to be able to disclose the underlying data behind the respective calculations, the Commission revised the data of the import volume from China and its market shares based on registrations following importation from the country concerned using as source EEA instead of S&P Global Mobility that it used in Table 2b of the provisional Regulation.

Table 2

Import volume in pieces and market share

	Investigation period
Registrations following importation from the country concerned (pieces)	345 888
Index (100 = 2020)	*1 827*
Market share	22,8 %
Index (100 = 2020)	*649*

Source: EEA.

(724) To be noted that there was an insignificant difference between the total registrations of imports from China using as source for the sales of the Union industry S&P Global Mobility (346 345 BEVs as stated in Table 2b of the provisional Regulation) as compared to EEA (difference of 0,13 %).

(725) Following provisional disclosure, the CCCME and the GOC claimed that the Commission skewed the calculation of the market shares of the Union industry, the Chinese BEV imports and third country imports as they are based on different denominators and cannot be reconciled. Furthermore, CCCME and the GOC stated that the Commission calculated the market share of Chinese BEV imports based on the actual consumption but the one for the third countries based on apparent consumption and if the market shares of the Union industry, the Chinese BEV imports and third country imports were added up, they exceeded 100 % in each year of the period considered.

(726) These claims are factually wrong. First of all, in the provisional Regulation, the Commission calculated two market shares for the Chinese BEVs imports and the sales of the Union industry, one based on the apparent consumption, and one based on the actual consumption (see Tables 2a, 2b and 5 of the provisional Regulation). For the imports from third countries the Commission calculated the market share only based on apparent consumption (see Table 17 in the provisional Regulation) as the assessment of imports from third countries as other known factor under causality analysis did not require a market share of these imports based on actual consumption. Furthermore, it was not clear what calculations were carried out by CCCME and the GOC, but contrary to CCCME and the GOC's claim, the sum of the market share of the Chinese BEVs imports (see Table 2a of the provisional Regulation), of sales of Union industry (see Table 5 of the provisional Regulation) and of imports from third countries (see Table 17 of the provisional Regulation) equals 100 % in each year of the period considered. Therefore, the claims were rejected.

(727) Following provisional regulation, the CCCME and the GOC also claimed that the Chinese BEV imports' (registrations) market share was not calculated based on the apparent consumption in the same manner as done for the Union industry. It further claimed that in Table 2a of the provisional Regulation, the Commission took the customs import data as the numerator and not the Chinese BEV registrations.

(728) The Commission did not calculate the market share of the registration of Chinese BEVs imports based on apparent consumption as the apparent consumption is the sum of sales of the Union industry and the imports as reported by the Member States customs. Such market share does not make any economic sense. To be noted that the sales of the Union industry are in fact the registrations of the BEVs sold by the Union industry while the import volume is different than the volume of registration of imports as not all imports are sold at the moment of importation, some imports are kept on stock to be sold at a later date. The aspect of stocks of imports was explained in recital (1017) of the provisional Regulation. Therefore, the claims were rejected.

(729) Following definitive disclosure, the CCCME and the GOC claimed that the Commission incorrectly stated that the CCCME's argument about third country market shares was misplaced even though it conceded that the market share of third country imports was assessed on the basis of apparent consumption. The CCCME further claimed that (i) the Chinese BEV imports' market share was calculated on both apparent and actual consumption basis, (ii) actual consumption-based import calculation was not done for third country imports even though the Commission had the EEA data, and (iii) the assessment of the volume effects of the Chinese BEV imports and their likely development for the threat of injury analysis was done mainly on the basis of the market share based on actual consumption. Furthermore, the CCCME claimed that the Commission stated that apparent consumption-based market shares make 'no economic sense' and therefore this equally applied for third country imports.

(730) Contrary to the CCCME's statement, the Commission did not state that that apparent consumption-based market shares made 'no economic sense'. In fact, in recital (728) of the present Regulation, the Commission stated that it did not calculate the market share of the registration of Chinese BEVs imports based on apparent consumption as the apparent consumption is the sum of sales of the Union industry and the imports as reported by the Member States customs and therefore such market share did not make any economic sense. For the sake of completeness, the Commission also calculated the market share of the imports from all other third countries following registration in Tables 17a and 17b of this Regulation, although no conclusions were drawn on this data.

(731) Following provisional disclosure, the CCCME and the GOC also claimed that the Commission wrongly calculated the market share in Table 2b of the provisional Regulation by dividing the BEV imports by the actual Union consumption, which was based on the data of the European Automobile Manufacturers' Association ('ACEA'), and not by the apparent Union consumption which was based on the same data sets as the Chinese BEV imports, i.e., EEA and S&P Global Mobility data.

(732) This claim in also factually wrong. Contrary to the CCCME and the GOC's claim, in Table 2b of the provisional Regulation, the Commission calculated the market share of the BEVs imported from China that were actually sold and registered and not of the total Chinese BEVs imports. Therefore, this volume was correctly divided by the actual Union consumption, which was based on the ACEA data. Therefore, the claim was rejected.

(733) Following provisional disclosure, the CCCME and the GOC further claimed that the Commission reported different volumes of the Chinese BEV imports since the start of the investigation. In particular, the CCCME and the GOC argued that the registration Regulation reported 479 720 BEVs imported from China in the investigation period while in the provisional Regulation the Commission reported 412 425 BEVs and therefore, the registration of the imports was based on data that did not constitute positive evidence and was, therefore, illegal, and the data in the provisional Regulation were still not reliable and accurate in addition to being unverifiable.

(734) The Commission disagreed with these claims. There is a reason why the volume of imports from China was different in the two regulations. In particular, in the registration Regulation, the Commission used as source of imports from China the Surveillance database. This was the only database at the disposal of the Commission that had available the import data until January 2024 by the time of the preparation of the registration Regulation. In the provisional Regulation, the Commission used as source of imports from China the Member States customs data as explained in recital (1002) of the provisional Regulation. The Commission also explained in recital (1002) of the provisional Regulation that a more granular examination of this data enabled a distinction to be made between imports of BEVs and imports of other goods such as quadricycles, electric mobility scooters etc., which were excluded from the scope of this investigation and therefore should not be included in the volume of imports from China. At the time of the registration of imports, the Commission did not have the complete data from the Member States customs and also did not decide to exclude the quadricycles from the scope of the investigation. This decision was only made in the provisional Regulation. Finally, the Commission noted that the registration of imports cannot be illegal as registration is merely a tool available to the Commission to direct the customs authorities to take the appropriate steps to register imports, so that measures may subsequently be applied against those imports from the date of such registration. Article 14(5) of the basic Regulation also provides the Commission with discretion as to when such registration should take place, allowing registration on the Commission's own initiative.

(735) Table 3 below shows the volume of imports of BEVs from China based on three sources i.e. Surveillance database, Eurostat database, and Member States customs.

Table 3

Volume of imports from China based on different sources

Source of data	Investigation period
Surveillance database	479 720
Eurostat database	421 723
Member States customs	412 425

(736) Furthermore, the Commission cannot disclose the detailed import data from the Member States customs as this data is very granular and includes confidential information, such as indication of individual importation. However, the CCCME and the GOC have access to Eurostat data and can check that the data used by the Commission for imports from China in the provisional Regulation was lower than the respective import data in Eurostat as the Eurostat data includes also quadricycles that were excluded from the scope of the investigation in the provisional Regulation. Therefore, the claims were rejected.

(737) Following provisional disclosure, the CCCME and the GOC also claimed that according to the Chinese export statistics from the China customs, the Chinese BEV exports to the Union were much lower in volume and, therefore, the Union customs statistics were inflated.

(738) The Commission could not accept this claim. In the provisional Regulation, in Table 16, the Commission also reported the volume of Chinese exports to the Union during the period considered based on the GTA database (which also used Chinese customs as source), which were higher than the volume of imports reported by the Member States customs in Table 2a of the provisional Regulation. The Commission used as product code 8703 80 when extracting the data from GTA which relates to 'Motor cars and other motor vehicles principally designed for the transport of nine or less persons, including the driver, including station wagons and racing cars, with only electric motor for propulsion (excluding vehicles for travelling on snow, golf cars and similar vehicles of subheading 8703 10)'. Furthermore, very similar data was submitted by the GOC in its questionnaire reply and therefore it was unclear why the GOC was challenging this data. The CCCME and the GOC did not specify which product code they used to extract the Chinese BEV export data. More details on the export data were provided in recital (1128) and Table 16 of this Regulation. Therefore, the claim was rejected.

(739) Following definitive disclosure, the CCCME and the GOC clarified that the Chinese product code used to report the volume of exports from China of BEVs was 8703 80 which was the same as the one used by the Commission. Furthermore, the CCCME and the GOC argued that the reason for the difference would appear to be the fact that the export volume used by the Commission included exports under other trade modes, for example processing trade, customs special monitor zone logistics goods, bonded zones, etc., while the data submitted by CCCME and the GOC pertained only to exports under the general trade mode, which in turn was more correct.

(740) The CCCME and the GOC did not submit any evidence to support their claims in this regard and they did not explain why the volume of exports under the general trade mode was more accurate than the total exports of BEVs from China under all regimes. Furthermore, as explained in Table 16 of this Regulation, there is a significant difference between the volume of exports reported by the CCCME and the GOC and the registered Chinese BEVs, and therefore the volume of exports reported by the CCCME and the GOC are clearly understated. Therefore, this data was rejected.

(741) Following provisional disclosure, the CCCME and the GOC also claimed that it was clear and known that other Union producers apart from Tesla, Mercedes Benz, Renault and BMW also imported BEVs from China.

(742) The Commission noted that CCCME and the GOC did not specify who were those other Union producers. Therefore, the claim was rejected as being unsubstantiated.

(743) Following provisional disclosure, the CCCME and the GOC further claimed that the Commission did not undertake an objective assessment of the Chinese BEV imports as it did not segregate and exclude the self-imports by the Union BEV producers (including the Union OEM producers, Tesla and other Union producers). Company 24 claimed that the Commission assessment should focus on imports of Chinese brands BEVs as most of the imports were not made by the Chinese brands BEVs and in this case there would be no factual basis for a finding of 'vulnerability' or 'threat of injury' suffered by the Union industry.

(744) As it was explained in recital (1131) of the provisional Regulation, all subsidized imports of BEV originating in China are subject to the current investigation, regardless of the ownership of a specific company. Therefore, the assessment of the volume of imports from China must be done based on the total volume of imports and not segregated or by excluding the imports made by the Union BEV producers. The countervailing duties apply to all imports of BEVs from China, not just the ones made by Chinese exporters. The Commission addressed the self-imports as another factor causing threat of injury in Section 6.2.9 of the provisional Regulation and Section 6.2.2.3 of this Regulation. Moreover, the post-IP data shows that the market share of the imports of Chinese brands increased significantly in the second quarter of 2024, while all the other imports from China decreased as shown in Table 13 of this Regulation. Therefore, this claim was rejected.

(745) Following definitive disclosure, the CCCME and the GOC reiterated their claim stated in recital (743) of this Regulation. The CCCME further stated that (i) the threat of injury assessment was based on the Chinese brand BEV imports, and (ii) the Commission's data prove that self-imports by the Union industry have progressively increased in the period considered and comprise the majority (nearly 70 %) of the imports of Chinese BEVs and their market share. Furthermore, the CCCME and the GOC stated that the explanations provided by the Commission in recital (744) of this Regulation were not sufficient.

(746) The Commission maintained its view stated in recital (744) of this Regulation. Furthermore, contrary to the CCCME and the GOC's claim, the threat of injury assessment was not based on the Chinese BEV imports only but on all imports as showed in Section 5 of the provisional Regulation. Such an assessment showed, however, that the threat of injury came mostly from the Chinese BEV imports, as it was explained in recital (1138) of the provisional Regulation. Therefore, the claim was rejected.

(747) Therefore, the Commission provisional conclusions as stated in recitals (1010) to (1017) of the provisional Regulation as revised by Table 2 were confirmed.

4.4.2. *Prices of the imports from the country concerned, price undercutting and price suppression*

(748) Following provisional disclosure, the CCCME and the GOC claimed that the Commission did not consider the differences in physical and technical product characteristics resulting in the classification of BEVs in different models and market segments, all of which affect BEV sales prices and their comparability. In this regard, the CCCME and the GOC reiterated their comments already made in their previous submissions that were explained in the provisional Regulation (see for example recitals (139), (49), (55), footnote 425 of the provisional Regulation). The CCCME and the GOC did not bring any new evidence in support of these claims.

(749) Furthermore, the CCCME and the GOC also ignored the fact that as explained in recital (1022) of the provisional Regulation, the Commission used a system of product categorisation based on PCN which took into account the key characteristics of the BEVs having an impact on the selling price in the Union market, and in particular the length, range, power and type of wheel drive. Furthermore, in the same recital the Commission explained that whilst the BEVs were complex products, with a very large number of distinct attributes and features (even vehicles that are marketed under a single commercial model name, can be offered in a wide range of configurations, also depending on the choice by the customer of attributes that are offered as an option), this did not mean that all these distinct attributes had a significant impact on price and therefore should be taken into account when comparing prices. The Commission also noted that the interested parties did not comment on the structure of the PCN. In addition, as further explained in recital (1023) of the provisional Regulation, the selling prices of the sampled Chinese exporting producers and the sampled Union producers were adjusted to dealer level to ensure that there were no imbalances in respect of level of trade.

(750) Moreover, in respect of market segments the Commission recalled recitals (1041) to (1043) of the provisional Regulation where this matter was already assessed in detail and rejected. In summary, the Commission recalled that there was no universally accepted segmentation for passenger cars and noted that no classification system existed which described segments in this industry using objective and measurable criteria. As a result, there was no clear dividing line between the alleged segments and the issue did not form part of the Commission's price comparison system. Additional information regarding segmentation was also provided in recitals (131), (141), (143), (167), (173) of the provisional Regulation. The CCCME and the GOC did not bring any new evidence in this regard. Furthermore, CCCME and the GOC is aware of the extensive variety of product models sold in the Union by the Chinese exporting producers and that over 90 % of these exports were matched to Union industry models as explained in recital (1044) of the provisional Regulation. The fact that there were no exports by Chinese exporters in certain so-called segments was not relevant to a fair price comparison, as long as the exported types sold on the Union market were compared with a Union model of similar characteristics, as was the case in this investigation. Therefore, it is clear that an extensive approach to differences in physical and technical product characteristics was adopted by the Commission's price comparison. Therefore, the claims were rejected.

(751) Following provisional disclosure, the CCCME and the GOC also argued that the Commission's argument that there were no universally accepted market segments cannot lead to the conclusion that all BEVs are homogenous, interchangeable and substitutable. The CCCME and the GOC referred in this regard to the data from S&P Global Mobility and an economic analysis carried out by two professors from the Katholieke Universiteit Leuven and the Centre of Economic Policy Research (CEPR) that was submitted before the imposition of the provisional countervailing duties, and it was described in recital (1252) of the provisional Regulation.

(752) As with the previous claims, the CCCME and the GOC ignored the detailed explanations provided in this regard by the Commission in the provisional Regulation in particular in recitals (1041) to (1048) and did not bring any new evidence in support of their claim. Therefore, this claim was rejected.

(753) Following provisional disclosure VDA also claimed that important elements of the Union passenger vehicle market, including the BEV segments, have been overlooked by the Commission's analysis.

(754) The Commission noted that VDA did not explain which important elements, apart from the segmentation of the BEV market, was allegedly overlooked by the Commission. Furthermore, as regard segmentation, the Commission did not overlook this element in its investigation. The segmentation was assessed in detail in recitals (1041) to (1043) of the provisional Regulation and VDA did not explain what was missing in the Commission's assessment in this regard. Therefore, the claim was rejected as being unsubstantiated.

(755) Following provisional disclosure, the CCCME and the GOC also claimed that in recital (1137) of the provisional Regulation, the Commission acknowledged the fact that the Union BEVs producers themselves imported affordable models from China.

(756) This claim is factually wrong. Contrary to CCCME and the GOC's claim, the text of recital (1137) of the provisional Regulation referred to the imports of Tesla from China that were not expected to increase significantly as the spare production capacity of Tesla was very low. Therefore, the claim was rejected.

(757) Following provisional disclosure, the CCCME and the GOC also claimed that the Commission's reference to the use of PCN in recitals (1043) to (1044) of the provisional Regulation was misleading. In this regard, the CCCME and the GOC stated that the PCNs were used only for one year of the period considered, and only for the purpose of assessing price undercutting in the investigation period, but not for price suppression and the general assessment of the Chinese BEV import prices.

(758) The Commission noted that the CCCME and the GOC did not explain how the Commission's reference to the use of PCN in recitals (1043) to (1044) of the provisional Regulation was misleading. Furthermore, it is the Commission practice to ask the sampled exporters and the sampled Union producers to submit detailed sales and cost of production data at PCN level only for the investigation period and not for the entire period considered. This is obvious from the questionnaires for the sampled exporters and the sampled Union producers, which are made available at the beginning of the investigation. The CCCME and the GOC did not raise this issue at an earlier stage of the investigation when the Commission potentially could have asked the sampled exporters and the sampled Union producers to submit additional information at PCN level. It is unclear why the CCCME and the GOC raised the point only at this late stage of the investigation. Therefore, the claims were rejected.

(759) Following provisional disclosure, the CCCME and the GOC also claimed that the PCNs did not reflect all the product characteristics and factors affecting price comparability.

(760) As it was explained in recital (1022) of the provisional Regulation, no interested party commented on the structure of the PCN at the beginning of the investigation when the Commission could have revised the PCN if warranted. Therefore, the claim was rejected.

(761) Following provisional and definitive disclosures the CCCME and the GOC also claimed that the Commission did not perform any assessment of interchangeability and substitutability for the BEVs in this case. The CCCME further stated that the Commission's reliance on PCN matching for the investigation period was insufficient to establish high competition and substitutability between Chinese BEV imports and Union produced BEVs, in view of the fact that (i) the Commission stated that BEVs are 'complex products, with a very large number of distinct attributes and features', (ii) the product mix of both the Chinese and Union BEVs changed over the entire period considered (iii) the Commission stated that the self-imports were to complement the Union producers' sales and were of different models than produced by the Union industry in the Union.

(762) The Commission disagreed with these claims. In recitals (1043) to (1049) of the provisional Regulation the Commission concluded that that BEVs form a single and continuous market of interchangeable products. Furthermore, its finding that over 90 % of Chinese imports could be matched to the sampled Union industry clearly demonstrated the interchangeability and substitutability of BEVs produced by the Union industry and the Chinese imports. Moreover, the CCCME is confusing product types with the product as such. Just because a BEVs is a complex product and there are several models of BEVs it does not mean that the different models of BEVs are not interchangeable and substitutable. For example, a BEV with a driving range of 300 km can be interchanged and substituted with a BEV with a driving range of 400 km. As it was explained in recital (1043) of the provisional Regulation, the variety of different types of BEVs share the same basic characteristics and the same main use, which is the transportation of a small number of persons from one point to another. They are also subject to the same regulations as regards, for instance, speed limits, licence requirements, and parts of the road network where they are allowed to circulate. The fact that the product mix changed in the period considered for both Chinese exporting producers and Union producers has no impact on the interchangeability and substitutability of the BEVs. Furthermore, as explained in recital (1045) of the provisional Regulation, in the investigation period, the Chinese exporting producers exported a wide range of BEV models at significantly varying prices, competing with the BEV models produced by Union producers and are planning to expand their portfolio for the Union market even further in the near future. Finally, in recital (1048) of the provisional Regulation, the Commission concluded that the Chinese exporting producers were not restricted to certain specific types of BEVs. Therefore, the claim was rejected.

(763) Following provisional disclosure, the CCCME and the GOC also claimed that the disclosure of the undercutting margin provided to the sampled Chinese exporting producer showed that the Chinese BEVs imports and the Union industry compete in only limited product segments and PCNs respectively.

(764) This claim is factually wrong and misleading. First of all, as repeatedly explained in the provisional Regulation, in the undercutting calculation the Commission did not take into account the existence of any alleged segmentation of the market. In fact, the PCNs used would cover the main characteristics affecting prices of BEVs under any segmentation scenario. Furthermore, as explained in recital (1031) of the provisional Regulation, the matching between the Chinese PCNs and the Union PCNs was above 90 % for each of the exporting producers in volume terms. Looking at the number of PCNs that were matched with the PCNs of the Union industry to assess the competition between the Chinese BEVs and the Union BEVs is misleading, as each PCNs is sold in different quantities on the Union market. For example, if one Chinese exporting producer is selling nine PCNs on the Union market and only four of them were matched with the PCNs of the Union industry, it does not mean that the competition between the Chinese exporting producer and the Union producers is low when in volume terms more than 90 % of the Chinese BEVs exported were matched with the Union BEVs. Therefore, the claim was rejected.

(765) Following provisional disclosure, the CCCME and the GOC also claimed that the Commission's price suppression analysis was inconsistent with Articles 15.1 and 15.2 of the SCM Agreement because (i) the import Chinese prices quoted by the Commission were average transfer prices and did not take into account the differences in the level of trade, the physical and technical differences between the BEVs and the product mix; (ii) the Commission had not demonstrated that it was the Chinese imports which had suppressed the Union industry prices; (iii) the Commission failed to consider that between 2020 and the investigation period, the Union producers were able to increase sales prices by 38 %; (iv) the Commission did not take into account that some imports were made by the Union producers themselves; (v) Chinese brand BEVs imports were limited to segment C and could not, therefore, have taken over sales and market share from the Union industry as a whole; (vi) the Commission did not consider the impact on prices in the absence of Chinese imports; (vii) the Commission did not consider all known factors in its price suppression analysis and in particular in the context of the transition from ICE vehicles to BEVs; (viii) the Commission did not consider the alleged lack of competitive overlap between the Chinese brand BEVs and the Union industry sales; (ix) the Commission did not consider the impact of internal competition between Union producers; (x) the Commission did not consider the extent to which dealers influenced market prices; and (xi) the Commission did not properly explain its statement in recital (1034) of the provisional Regulation that the selling price of the sampled Chinese exporting producers were 30 % lower than the cost of production of the Union industry.

(766) As regards point (i) the Commission did not contest that the prices in Table 3 of the provisional Regulation related to average transfer prices at a CIF level and that these prices were average prices. However, such prices were not used in the price suppression analysis. Instead, the Commission used the development of sales prices and unit cost of production of the Union industry as explained in recital (1033) of the provisional Regulation, the volume of imports from China and their market share and the degree of competition with the Chinese BEVs as explained in recital (1035) of the provisional Regulation.

(767) As regards point (ii) which was reiterated after definitive disclosure, the Commission disagreed that it had not demonstrated that Chinese imports had suppressed prices. The price comparison analysis at recital (1034) of the provisional Regulation and the undercutting analysis at recitals (1022) to (1030) of the provisional Regulation, together with the increasing market share of the Chinese imports (referred to in recital (1035) of the provisional Regulation) clearly established that Chinese imports were a major factor in the price suppression suffered by the Union industry.

(768) As regards point (iii) the Commission explained in recital (1076) of the provisional Regulation that the Union industry average sales prices per piece increased by 38 % which was due to the changes in the mix of models sold by the sampled Union producers over the period considered, especially bearing in mind that the Union market was gradually transitioning from ICE vehicles to BEVs and new models were being launched and sold throughout the period considered by the Union industry. However, as explained in recital (1033) of the provisional Regulation, the Union industry was unable to raise its prices sufficiently to cover its costs.

(769) As regards point (iv) relating to imports of the Union producers, the Commission was fully transparent about this type of imports in the provisional Regulation. However, all imports of BEV from China were relevant to the price suppression analysis because all imports were deemed to be subsidised. The Commission only focussed on imports made by the three sampled Chinese groups in its undercutting analysis because these were the sampled exporting producer groups.

(770) As regards point (v) which was also reiterated after definitive disclosure, the Commission disagreed with the claim that Chinese imports were limited in scope and volume. In fact, the three sampled Chinese exporters exported 17 PCNs during the investigation period. The substantial Chinese market share rise established at Tables 2a and 2b of the provisional Regulation were not all made in one so-called 'segment' of the market. The 17 PCNs at issue concerns BEVs with a length of at least 4 200 mm, range of at least 300 km, the full range of power and wheel drive established in the PCN.

(771) As regards point (vi) the Commission disagreed that price suppression would have occurred in the absence of Chinese imports. Clearly the Union market would have been vastly different had large quantities of subsidised Chinese imports not been present on the Union market at prices which undercut the Union prices. In fact, in the absence of unfair Chinese competition, it is clear that the Union industry would have sold much more BEVs on the Union market and would have reduced unit costs taking advantage of a much better ability to spread its fixed costs over more sales. This would have enabled the Union producers to set prices at more profitable levels within the context of the transition of the market from ICE vehicles to BEVs.

(772) As regards point (vii) the Commission disagreed that its price suppression analysis was flawed because it omitted to comment on all relevant factors. In fact, all factors identified during the investigation have been assessed. The transition of the Union market from ICE vehicles to BEVs formed a key part of the Commission's findings relating to injury, causation and Union interest. The impact of price suppression on the transition was given a major role in the Commission's conclusion on the situation of the Union industry at Section 4.5.4 of the provisional Regulation.

(773) As regards point (viii) which was also reiterated after definitive disclosure, the investigation did not reveal that there was any significant lack of competitive overlap between the Chinese imports and the Union industry sales. As mentioned at recital (1044) of the provisional Regulation, the Commission noted a high degree of matching between the product types imported and those sold by the Union industry.

(774) As regards point (ix) referring to the internal competition between Union producers, the Commission's view is that although such competition is strong, it is fair competition that has developed to the benefit of Union consumers. By contrast, the subsidised imports have penetrated the Union market taking advantage of the heavy subsidisation provided by the GOC.

(775) As regards point (x), the role of dealers on the market was described at recitals (1024) to (1027) of the provisional Regulation. Dealers can influence the prices on the Union market for both imported BEVs and those produced by the Union industry. However, this influence was limited to discounts which could be offered to their customers within the scope of their overall margin. This influence on prices was therefore strictly limited for both imported BEVs and those produced by the Union industry. In addition, bearing in mind that the undercutting calculation was performed at dealer level, the prices from dealers to end consumers were not relevant to the calculation.

(776) As regards point (xi) this calculation was performed on a type-by-type basis for the investigation period and was therefore similar to undercutting, except that actual Union prices were replaced by the unit costs of production of the Union industry. This margin (30 %) was much higher than the undercutting margin (12,7 %) as it also took into account the financial losses made by the Union industry which were summarised at Table 10 of the provisional Regulation (10,8 % in the investigation period) and the denominator used for the calculation was the CIF import price. The margin calculated demonstrated the extent to which Chinese imports are threatening to cause material injury to the Union industry through price pressure.

(777) The claims in recital (765) of this Regulation were therefore rejected.

(778) Following provisional disclosure, Company 24 claimed that the Commission erred in assuming in its price suppression analysis that the Union producers would have planned to price their models at full cost plus profit. Company 24 also stated that the situation of the Union industry will improve as soon as production volume increases and the producers start to benefit from economies of scale.

(779) The Commission agreed with Company 24's statement that the situation of the Union industry will improve as soon as production volume increases and the producers start to benefit from economies of scale as explained in recital (1194) of the provisional Regulation. However, as stated in recital (1195) of the provisional Regulation, Tables 2a and 2b of the provisional Regulation demonstrated that the Union BEV industry was losing market share at an unsustainable rate. The assessment made in Section 5 of the provisional Regulation further indicated that these market share losses will continue over the period up to the end of 2026. Therefore, if the Union industry continues to lose market share significantly, it will not be able to reach economies of scale. As concerns the pricing strategy, while for certain models of BEVs the Union industry would not be able to set prices at full cost plus profit in the absence of subsidised imports from China sold on the Union market at undercutting prices, this does not mean that the subsidised Chinese BEVs were not suppressing the prices of the Union industry when in the investigation period the financial losses incurred by the Union industry started to increase when the market share of the Chinese imports was the highest. Therefore, the claim was rejected.

(780) Company 24 also claimed that there was no apparent causal link between the presence of Chinese BEV models on the Union market and the price level of the Union producers as (i) when the imports from China increased, the prices of the Union industry increased during the period considered by 38 % which was above and beyond the increase in the cost of production which grew by 24 %, (ii) the Chinese BEV imports could not have any impact on prices of the Union industry since they had a market share of only 7,3 % in the investigation period, compared to the market share of the Union industry of 60-65 %, (iii) price pressure exercised by the competing ICE and hybrid vehicles, (iv) the effect of the subsidisation programs of the Member States for BEV purchases.

(781) As concerns point (i), the reasons for the price increases of the Union industry were addressed in recital (1076) of the provisional Regulation where it was clarified that this development was affected by changes in the mix of models sold by the sampled Union producers over the period considered, especially bearing in mind that the Union market was gradually transitioning from ICE vehicles to BEVs and new models were being launched and sold throughout the period considered. Furthermore, the reasons for the increases in costs for the Union industry

were also explained in recital (1078) of the provisional Regulation where it was stated that this development was also affected by changes in the mix of models being produced. In addition, the unit cost was also driven by the increase in the cost of components, especially batteries due to rising costs for raw materials including cobalt, nickel and lithium. The cost of other components also increased especially those affected by the energy crisis such as steel and other metals. A factor which had a downward impact on unit costs was the increase in the volume of production and sales as shown in Table 4 and Table 5 of the provisional Regulation, as the Union producers were able to spread the fixed costs over higher quantities of BEVs.

(782) As concerns point (ii), the fact that the Chinese brand BEVs have a market share of 7,3 % in the investigation period is irrelevant in this regard. It is recalled that in the undercutting margin calculations, the matching between the Chinese PCNs and the Union PCNs was above 90 % for each of the exporting producers as explained in recital (1031) of the provisional Regulation and therefore the Chinese, while the matching between the Union PCNs and the Chinese PCNs was between 61 % and 83 % as explained in recital (57) of this Regulation.

(783) As concerns point (iii) referring to the price pressure exercised by the competing ICE and hybrid vehicles, the Commission noted that this was a reiteration of the claim stated in recital (1040) of the provisional Regulation that was addressed in recital (1041) of the provisional Regulation and no new elements were provided by Company 24 in this regard.

(784) As concerns point (iv) the subsidisation programs of the Member States for BEV purchases are in general affecting Chinese BEVs as well and not only the BEVs produced by the Union industry.

(785) Therefore, these claims were rejected.

(786) Following definitive disclosure, the CCCME and the GOC claimed that Commission stated that as the import prices of BEVs from China were transfer prices it confirmed its findings that the decrease in import prices by 10 % during the period considered was meaningless.

(787) The Commission disagreed with this statement. The fact that the import prices were transfer prices did not mean that the decrease in import price of 10 % during the investigation period was meaningless. This is actually the price at which imports entered the Union, it is the CIF price based on which customs duties and countervailing duties are calculated and paid by the importers. Therefore, this claim was rejected.

(788) Following definitive disclosure, the CCCME and the GOC claimed that without an assessment of the product mix changes of the Chinese BEV imports and the Union industry sales, a finding of price suppression could not have been made in the particular circumstances of the market in transition.

(789) The Commission disagreed with this claim. There is no legal requirement that price suppression should be done at PCN level as the WTO jurisprudence does not require that. In the case at hand the Commission carried out a comprehensive analysis of price suppression. The Commission used the development of sales prices and unit cost of production of the Union industry as explained in recital (1033) of the provisional Regulation, the volume of imports from China and the degree of competition with the Chinese BEVs as explained in recital (1035) of the provisional Regulation. Furthermore, as explained in recital (1034) of the provisional Regulation, the Commission also made a comparison at the product type level during the investigation period and established

that the exporting producers sold on average 30 % cheaper than the weighted average cost of production of the Union industry during the investigation period. Finally, in recital (1035) provisional Regulation the Commission concluded that the Chinese imports suppressed the prices of the Union industry irrespective of the product type and that the Chinese imports had a negative impact on all types of models, including the expensive ones. Consequently, contrary to the claim made, the Commission took into account the product mix in its price suppression analysis and also concluded that price suppression was exercised on all types of models. Therefore, the claim was rejected.

(790) Following definitive disclosure, the CCCME and the GOC claimed that in the price suppression analysis the Commission did not assess the trends in domestic prices, and their interaction with the Chinese BEV imports over the period considered as (i) in 2020, the volume of the Chinese BEV imports was extremely low and could not have caused price suppression, (ii) between 2021 and the investigation period, the majority of imports of the Chinese BEVs in each year were by the Union producers themselves and therefore it was counter-intuitive for the Commission to argue that Union producers would lose market share to themselves and cause price suppression for their Union production, (iii) the Commission did not establish that the remainder of the Chinese BEV imports pertaining to the Chinese brands caused price suppression in the period between 2021 and the investigation period, (iv) taking into account the Union industry's own production in the Union and its self-imports, the Union industry did not lose market share over the period considered but gained market, and this could not be reconciled with the narrative of Chinese BEV imports causing price suppression, (v) the Commission did not take into account evidence concerning the Chinese BEV imports on a year-to-year basis, and disregarded the intervening trends which conflicted with its own hypotheses and conclusions as overall: (a) there was an inverse correlation between the Union industry market share losses and its profitability, and (b) there was an inverse correlation between the Chinese BEV import volumes and the Union BEV industry's price increases and profitability; and (vi) even in its end-point to end-point analysis the Commission overlooked: (a) the significant sales volume increase year-on-year by the Union industry and the fact that the Union industry nearly doubled its sales between 2020 the investigation period; (b) for their Union production, the Union BEV producers lost only 5 percentage points market share over the period considered which contradicted the Commission's statement that the Union industry lost 'market share at an unsustainable rate', and (c) the Union BEV producers' reduced losses by 52 % over the same period and all these developments cannot be attributed to the change in the product mix for which no data was collected.

(791) This claim is without merit. In relation to point (i), the market share of the Chinese imports was above *the minimis* and therefore these imports could have caused significant price suppression. With reference to points (ii) and (iii), as explained in recital (769) of the present Regulation, all imports of BEV from China were relevant to the price suppression analysis because all imports were deemed to be subsidised and the Commission only focussed on imports made by the three sampled Chinese groups in its undercutting analysis because these were the sampled exporting producer groups. As far as point (iv) is concerned, the imports from China of the Union industry cannot be aggregated with the production of the Union producers in the Union in order to calculate the market share of the Union industry. In relation to points (v) and (vi), the fact that the market share of the Union industry decreased during the period considered while its financial losses decreased in the period 2020 and 2022, or that the market share of the Chinese imports increased during the period considered while the losses of the Union industry decreased in the period 2020 and 2022, is not relevant for the price suppression analysis as the Commission did not conclude that in this case there was material injury, but threat of injury. As the Union market is in transition, the production and sales of the Union industry increased in the period considered and this increase had a positive effect on the profitability of the Union industry by 2022. In the investigation period, the positive effects in the profitability of the Union industry started to reverse and the financial losses started to increase. To be noted that in the investigation period the imports from China had the highest market share. The Union BEV industry is a capital-intensive industry and needs to be able to produce and sell sufficient volumes of BEVs in order to be able to cover its high fixed costs. The subsidised low-priced imports from China, if they continue to increase, will not allow the Union industry to reach such economies of scale, cover a larger part of its fixed cost, reduce its unit cost of production for BEVs and thus become profitable. The imports from China managed to increase their market share as they are low-priced and therefore exercised significant price suppression on the Union market which is not able to sell enough volumes of BEVs. A loss in market share of the Union industry of 9 percentage points based on apparent consumption or of 5,2 percentage points based on actual consumption in the period considered is significant considering that the Union market is in transition from ICE vehicles to BEVs and the high investments that the Union industry needs to make in order to increase the production of BEVs in line with the developments of the Union market. Therefore, these claims were rejected.

(792) Following definitive disclosure, the CCCME and the GOC claimed that the Commission did not provide reasoned and adequate explanations as to the role and relevance of the 12,7 % price undercutting and the assessment of Chinese BEV prices being 30 % below the Union industry's production cost, in the determination of price suppression.

(793) The Commission disagreed with these claims. The Commission noted that price undercutting and price suppression are alternative standards of price effects analysis under Article 8(2) of the basic Regulation. The price undercutting is calculated for the investigation period while the price suppression for the entire period considered. The Commission did not use price undercutting to demonstrate price suppression, however the significant price undercutting found in the investigation period confirmed that the price suppression observed throughout the period concerned was caused by the subsidized low-price Chinese imports. Therefore, in recital (1034) of the provisional Regulation, the Commission found that, during the investigation period, the selling price of the sampled Chinese exporting producers were 30 % lower than the weighted average cost of production of the Union industry. Moreover, in recital (776) of this Regulation, the Commission explained that the calculation was performed on a type-by-type basis for the investigation period and was therefore similar to undercutting, except that actual Union prices were replaced by the unit costs of production of the Union industry. This margin (30 %) was much higher than the undercutting margin (12,7 %) as it also took into account the financial losses made by the Union industry which were summarised at Table 10 of the provisional Regulation (10,8 % in the investigation period) and the denominator used for the calculation was the CIF import price. The margin calculated demonstrated the extent to which Chinese imports are threatening to cause material injury to the Union industry through price pressure. Furthermore, in recital (1035) of the provisional Regulation, the Commission explained that a major factor in this price suppression was that the registrations following importation of Chinese subsidised imports were able to increase in volume by 1 729 % and reach a 22,8 % market share in the investigation period as compared to 2020 as shown at Table 2b of the provisional Regulation and that these sales were mainly at the expense of Union producers which were losing market share. Furthermore, in the same recital of the provisional Regulation, the Commission stated that the price suppression was also explained by the evidence that the Chinese imports compete with the Union sales regardless of the product type. Even if the Union would increase its sales of more expensive models, those too would compete with a type of Chinese BEV and that this contributed to the Union industry making double digit losses as shown in Table 10 of the provisional Regulation. Therefore, this claim was rejected.

(794) Following definitive disclosure, the CCCME and the GOC referred to (i) the Commission's statement that the Union producers were able to increase sales prices by 38 % because of the difference in product mix, and (ii) the Commission's statement in recital (961) of this Regulation (that as the Union industry was working based on orders and it took around 6 months to deliver the BEVs to the consumer and actually register the sale in the accounting records of the Union industry, it followed that the profitability of the Union industry in one quarter was not directly the result of the price pressure exercised by the Chinese subsidised BEVs sold on the Union market in that quarter), to contest the findings of price suppression. According to CCCME and GOC, as the cost of production in each year of the period considered as booked in the accounting records of the Union producers related to a different product mix from that sold on the Union market during the same period and therefore, the losses do not relate to the same product mix and cannot be representative of any price suppression.

(795) These claims are without merit. Contrary to the CCCME and the GOC's claim, the cost of production in each year of the period considered as booked in the accounting records of the Union producers does not relate to a different product mix from that sold on the Union market during the same period. The six-month gap that the Commission was referring to in recital (961) of this Regulation, was between the date an order is placed by a customer and the date of the actual sale of the BEV to the customer. The sale of the BEV is recorded in the accounting records when the BEV was actually sold to the customer and not when it was ordered. The producers have different records for orders called 'orders book' which are different than the sales ledger as such. The cost of production of a BEV is recorded in the accounting records during the period of time the BEVs is produced and based on the accrual principle of accounting rules the period of the cost of production of a BEV must be matched with the period when the BEV is sold. Therefore, the claims were rejected.

(796) Following definitive disclosure, the CCCME and the GOC claimed that in the context of price suppression, an authority is obliged to consider the price increases 'which otherwise would have occurred' in the absence of the allegedly subsidized imports ([118]) and, therefore, must necessarily undertake a counterfactual analysis ([119]). Furthermore, the CCCME stated that the Commission's statement in recital (771) of this Regulation that prices would have increased but for the Chinese imports was a mere assumption not based on any consideration, quantitative or qualitative, of whether the market conditions were such that, absent the effect of the Chinese BEV imports, prices should have increased in line with the rising costs. In this regard, the CCCME argued that the Union industry's self-imports of BEVs increased exponentially during the period considered, there was strong intra-EU and third country competition on the BEV market, the consumer perception of Union-produced BEVs being less affordable in the Union was significant, and therefore, there were several factors limiting the Union producers' ability to increase prices. Furthermore, the CCCME claimed that the Commission did not undertake the relevant enquiry as to whether the massive increase in production costs could have been passed on to the consumers and, if so, to what extent considering particularly the fact that the Union BEV market was in transition and the product mix was constantly changing on both the Chinese side and the Union producers' side.

(797) In recital (771) of this Regulation that CCCME and the GOC referred to in its claim, the Commission did not state that prices would have increased in the absence of the Chinese imports. In fact, the Commission stated that the Union market would have been vastly different had large quantities of subsidised Chinese imports not been present on the Union market at prices which undercut the Union prices. The Commission further stated that in the absence of unfair Chinese competition, it was clear that the Union industry would have sold much more BEVs on the Union market and would have reduced unit costs taking advantage of a much better ability to spread its fixed costs over more sales. This would have enabled the Union producers to set prices at more profitable levels within the context of the transition of the market from ICE vehicles to BEVs. It is recalled that the Union industry is a capital-intensive industry and therefore has high fixed costs and it needs to reach economies of scale to cover better its fixed costs. A larger volume of production translates into a better covering of fixed costs and therefore lower unit costs. A lower unit costs means an increase in the profitability. The impact of the imports of BEVs from China of the Union industry have been already assessed in recital (769) of this Regulation and of the intra-EU and third country competition was assessed as well in recitals (774) of this Regulation and Section 6.2.1 of the provisional Regulation and Section 6.2.2.1 of this Regulation. The CCCME seemed to ignore the findings of the Commission in this respect. Finally, it was not clear to which massive increase in production costs the CCCME and the GOC referred to in its claim. Therefore, the claims were rejected.

(798) Following definitive disclosure, the CCCME and the GOC claimed that the Commission did not consider whether the price suppression was significant within the meaning of Article 15.2, and therefore, also acted inconsistently with Article 15.1 and the second sentence of Article 15.2 of the SCM Agreement. Furthermore, the CCCME claimed that the price suppression if any, was not significant as among other factors, over the period considered, the Union producers' costs increased by EUR 7 457/piece whereas their prices increased by EUR 9 156/piece.

(799) In recital (1033) of the provisional Regulation, the Commission stated that the development of sales prices and unit production costs in the Union throughout the period considered in Table 7 of the provisional Regulation showed evidence of significant price suppression. The Union industry was unable to raise its prices to cover its costs. Therefore, the Union industry incurred financial losses on sales of BEVs throughout the period considered. The losses incurred by the Union industry were significant and although they were decreasing in the period 2020 to 2022, the losses started to increase in the investigation period. Furthermore, in recital (1034) of the provisional Regulation, the Commission stated that the selling price of the sampled Chinese exporting producers were 30 % lower than the weighted average cost of production of the Union industry and this shows the significant price pressure. Therefore, the claims were rejected.

([118]) Appellate Body Report, *China – GOES*, para. 141.
([119]) Panel Report, *Russia – Commercial Vehicles*, para. 7.61.

(800) Following definitive disclosure, on several occasions, the CCCME claimed that in the provisional Regulation and in the definitive disclosure document the Commission provided *ex post* explanations.

(801) This claim is unclear and without merit. In the provisional Regulation, the Commission explained its provisional findings while in the definitive disclosure document the Commission addressed the comments raised by the interested parties as well as complemented its provisional findings. Therefore, this claim is rejected.

(802) Following provisional disclosure, the CCCME and the GOC also claimed that the Commission's undercutting analysis was inconsistent with Articles 15.1 and 15.2 of the SCM Agreement. More specifically CCCME and the GOC criticised the Commission's undercutting analysis because (i) undercutting margin was calculated only for the investigation period which was not sufficient; (ii) the result-oriented sample of three Chinese exporting producer groups was not representative for the calculation of the undercutting margin and the export sales of Tesla should be included in the undercutting calculations who was the largest Chinese exporter and was granted individual examination and therefore its data was verified by the Commission; (iii) the PCN-based undercutting margin calculation was not representative because only five out of 17 PCNs of the Chinese exporting producers were fully matched with PCNs of the Union industry; (iv) the Commission did not ensure price comparability and did not make any adjustments for factors affecting price comparability such as the market segmentation; (v) the Commission did not adjust prices to account for brand value; (vi) the Commission did not explain how large fleet sales discount could be equated to the dealer sales; (vii) the Commission did not take into account the sales channels of the Chinese exporting producers mentioned in the Initiation document, (viii) the Commission did not explain and provide any evidence that the dealer level was the correct level of trade and it was not clear how for the sampled Union producers the sales to related dealers were considered to be at arm's length and not a transfer price and how the Union producers' prices to the dealer were established, and (ix) the Commission did not properly take into account dealer discounts to end consumers.

(803) In respect of point (i) above which was reiterated after definitive disclosure, the Commission calculated the undercutting margin for the investigation period only because, according to the Commission's normal policy and clearly compatible with WTO rules on price comparisons, this approach limited the burden on cooperating companies to manageable levels, whilst still ensuring that undercutting is examined for a sufficiently long period to make the results meaningful. This is in contrast with other price related aspects of the injury examination, such as price depression/suppression and an examination of price trends which are normally performed over a four-year period. Furthermore, as explained in recital (1022) of the provisional Regulation, the calculation of the undercutting margin is made on a PCN level and in the questionnaires for the sampled Chinese exporting producers and sampled Union producers the Commission requested these parties to provide the sales data based on the PCNs only for the investigation period. Therefore, it was clear from the beginning of the investigation that the undercutting margin, which is done based on the PCN, will be carried out by the Commission only for the investigation period. Neither the CCCME and the GOC nor any other interested party commented on the questionnaire and claimed that the Commission should ask the sampled Chinese exporting producers and the sampled Union producers to report the sales data at the level of the PCN for the entire period considered.

(804) In respect of point (ii) which was reiterated after definitive disclosure, as already explained in recitals (48) to (76) of the provisional Regulation, the Commission considered the sampling of the Chinese exporting producers as representative. Indeed, as explained in recitals (29) and (30) of this Regulation, the Commission granted individual examination to Tesla. However, there is no legal obligation to take into account in the calculation of the undercutting margin the export sales of companies subject to individual examination. The sole purpose of an individual examination is to determine a specific duty rate for a cooperating company that was not originally sampled. The purpose is not to integrate the data of that individually examined company in the overall injury analysis retrospectively and there is no legal obligation to do so. That would defeat the purpose of sampling in the first place. The Commission recalled that the undercutting margin calculations in this case required a complex analysis entailing the collection of data going way beyond what is needed to determine a subsidy rate. In this case the Commission only verified the subsidisation received in China by Tesla. Furthermore, the comparison of the prices of individual exporters with the prices (actual or target) of the Union industry is only required to determine the injury margin that would serve as a basis of the duty level. In this case, this does not apply since the duty level is based on the subsidy amount. The undercutting margin established for the sample is considered representative

for cooperating companies in China as a whole and in particular of those Chinese companies having significant overcapacity. The fact that the undercutting margin was calculated for some companies that were granted individual examination in previous investigations is irrelevant especially as it was done in anti-dumping cases where it was necessary to check whether the application of the lesser duty rule could lead to a lower duty rate than the dumping margin determined for the company subject to individual examination. Furthermore, the Commission decided in a number of cases explicitly not to take into account in its price analysis the undercutting margin of the companies subject to individual examination such as *Fasteners from China* ([120]) investigation.

(805) In respect of point (iii), as explained in recital (763) of this Regulation, the matching between the Chinese PCNs and the Union producer's PCNs was above 90 % for each of the exporting producers in volume terms. Looking at the number of Chinese PCNs that were matched with the PCNs of the Union industry to assess the competitivity between the Chinese BEVs and the Union BEVs is misleading, as each PCNs is sold in different quantities on the Union market. The volume of sales is the most important method to establish representativity in this respect.

(806) In respect of point (iv) which was also reiterated following definitive disclosure, as explained in recital (759) of this Regulation in respect of market segments the Commission recalled recitals (1041) to (1043) of the provisional Regulation where this matter was already assessed in detail and rejected. In summary, the Commission recalled that there was no universally accepted segmentation for passenger cars and noted that no classification system existed which described segments in this industry using objective and measurable criteria. As a result, there was no clear dividing line between the alleged segments and the issue did not form part of the Commission's price comparison. Additional information regarding segmentation was also provided in recitals (131), (141), (143), (167), (173) of the provisional Regulation. The CCCME and the GOC did not bring any new evidence in this regard apart from criticising the Commission for not using the segmentation in the calculation of the undercutting margin, which was made at a PCN-level and no interested party commented on the PCN as explained in recital (1022) of the provisional Regulation. When establishing its PCN system the Commission concluded that there was no need to include product segment as a criterion in the PCN system, as this criterion was already covered by other criteria, and it would have been very difficult to ensure that all parties recorded market segment in a standardised manner.

(807) In respect of point (v) which was also reiterated following definitive disclosure, the CCCME provided (i) a study by two professors from the KU Leuven and CERP which, among other things, on brands briefly compares prices between Union producers, (ii) an article prepared by website motor1.com and (iii) a study prepared by Deloitte '2024 Deloitte Global Automotive Consumer Study' that basically, on brands, focuses on the consumers switching from one brand to the other when purchasing their next vehicle. However, these studies do not perform an analysis of any branding differences between the sampled exporting producers' sales of BEVs on the Union market in the investigation period and the equivalent sales of the sampled Union producers and do not explain how the Commission should take such factor into account in its price comparison. Therefore, the comments made by CCCME and the GOC, including the attached studies, are a repetition of the issue already considered by the Commission at recitals (1036) and (1037) of the provisional Regulation.

(808) In respect of point (vi), in recital (1027) point (iii) of the provisional Regulation, the Commission explained that large fleet sales are specific for certain categories of large customers such as rental companies, governmental entities and large private companies and that these were volume sales for both Union producers and the Chinese exporting producers and were considered to be similar to a dealer level as a discount was applied for the volume of sales.

([120]) Council Regulation (EC) No 91/2009 of 26 January 2009 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China (OJ L 29, 31.1.2009, p. 1).

(809) In respect of point (vii), in the calculation of the undercutting margin, the Commission took into account the sales channels of the sampled Chinese exporting producers in the investigation period. The sales channels mentioned in the Initiation document were the sales channels of several Chinese exporting producers and cannot be taken into account in the calculation of the undercutting margin if they were not used by the sampled Chinese exporting producers. The CCCME and the GOC did not further explain how sales channels of non-sampled companies could be taken into account in the calculation of the undercutting margin of the sampled Chinese exporting producers.

(810) In respect of point (viii) in recital (1024) of the provisional Regulation the Commission explained that the Commission established that the dealer level (price to the dealer) was the central point where competition took place, and the majority of the sales transactions were realised. The Commission further explained that the sales to the dealer or via the agent or to key accounts represented around 95 % of the total sales of the Union industry and around 78 % sales of the Chinese exporting producers. Furthermore, no distinction between related and unrelated dealers was needed as the investigation confirmed that prices to all dealers were made at arm's length. During the on-spot verification, the Union industry explained that the discrimination between related and unrelated dealers was not in their economic interest, and, in addition, it might raise competition law compliance issues. Furthermore, the Commission, when possible, compared prices to a related dealer vs. a price to unrelated dealer and did not identify significant differences. Finally, as concern the calculation of the prices to the dealer of the sampled Union producers, in recital (1027) of the provisional Regulation for each sales models the Commission explained how the price to the dealer was established.

(811) In respect of point (ix) as the undercutting calculation was carried out at the level of prices to the dealer the discounts given by the dealers to the consumer were irrelevant for the undercutting calculation.

(812) Therefore, the CCCME and the GOC's claims regarding undercutting margin were rejected.

(813) Following provisional disclosure VDA claimed that price differences can always be attributed to a variety of factors, so they do not necessarily have to be a sign of subsidies. In particular, VDA stated that even for products like a Big Mac, that is entirely the same product around the globe, there are price differences within different regions (cf. the Big Mac Index). So, for a product like BEVs, that comes in many different models and where it is hard to find a comparable on a global scale, differences in price do even have less significance with regard to alleged subsidisation.

(814) This claim is without merit. Contrary to VDA's claim, in the undercutting calculation, the Commission is not comparing prices of the same product in different markets. In the undercutting calculation the Commission is comparing the price of the Union industry with the prices of the Chinese exporting producer for BEVs on the Union market as explained in recital (1022) of the provisional Regulation. Therefore, the claim was rejected.

(815) Following provisional disclosure VDA also argued that in the provisional Regulation, the Commission rejected the claim that the Union industry held a strong position in terms of dealership networks and after-sale services.

(816) This claim is factually wrong as VDA misconstrued the Commission explanations in recital (1166) of the provisional Regulation. In fact, the Commission did not reject the claim that the Union industry held a strong position in terms of dealership networks and after-sale services. In recital (1166) of the provisional Regulation the Commission rebutted the claim of Company 24 which stated that in contrast to the Chinese exporting producers, the Union industry enjoyed a strong position in the Union market with respect to dealership networks and aftersales services which facilitates sales on the Union market as explained in recital (1165) of the provisional Regulation. The Commission rebutted the claim of Company 24 by stating that the Chinese exporters were in the process of building dealership networks as well as taking advantage of online sales which had already proven as a successful strategy for Tesla. Therefore, this claim was rejected.

(817) Following provisional disclosure Company 24 also claimed that in the calculation of the undercutting margin the Commission should take into account the brand recognition, market positioning and dealer networks of the BEV producers as well as the resale value of the BEV in the same way as it would do for differences in physical characteristics.

(818) The Commission noted that Company 24 did not provide any estimates of the market value for such differences. Therefore, this claim was rejected as being unsubstantiated.

(819) Following provisional disclosure Company 18 disagreed with the Commission's statement in recital (1037) of the provisional Regulation that the brand value of ICE vehicles could not be presumed to be carried over to BEVs automatically and stated that it was possible to add a price premium to BEVs.

(820) The Commission noted that Company 18 did not quantify this price premium. Therefore, the claim was rejected as being unsubstantiated.

(821) Following definitive disclosure, the CCCME and the GOC claimed that it could not comment on the structure of the PCN which did not include the market segment as only following provisional disclosure the Commission disclosed that it would not carry out a segmentation analysis while the Commission requested the information regarding market segments to the Chinese exporting producers. The CCCME and the GOC also stated that the Commission did not establish the correlation between PCNs and segments, and there was no evidence in the case file that the Commission even considered assessing the segments and their comparability to the PCNs or ensuring that the PCNs took into account the model and segment-based price differences. To support its arguments, the CCCME and the GOC provided a list of BEV models claiming that while they were covered by the same PCN, their sales price varied significantly.

(822) In the questionnaire for exporting producers as well as for the Union producers, the Commission requested information regarding the market segment in which the producers considered that their BEVs belonged. This information was requested separately from the information on the PCN basis. Furthermore, in addition to the information regarding market segmentation, the Commission also requested information regarding production site, launch date, body type, efficiency, fast charge, battery capacity, number of seats. This information was requested in order for the Commission to understand the type of BEVs sold by the sampled exporting producers and sampled Union producers. However, just because the Commission requested this additional information it did not mean that it would take it into account in its injury and price assessment if it considered that it was not needed. As explained in recital (806) of this Regulation, the Commission did not consider that a segmentation analysis was needed. Furthermore, as explained in recital (1022) of the provisional Regulation, the PCN took into account the key characteristics of the BEVs having an impact on the selling price by the Union industry, and in particular the length, range, power and type of wheel drive. Furthermore, in footnote 425 of the provisional Regulation, the Commission explained that the length of the BEV was closely associated with the segments defined in the most commonly used car categories (i.e. based on letters A, B, C, etc.). The CCCME and the GOC did not provide any evidence to the contrary in this regard. Furthermore, as explained in recital (1042) of the provisional Regulation, there was no universally accepted segmentation for passenger cars and no clear dividing line between the alleged segments, resulting often in different segment classifications of a single model. For example, one of the most popular BEVs imported from China, the MG4 Hatchback, is classified in segment C by S&P Global mobility, EV-database ([121]) and by SAIC on the MG Motor Europe website ([122]). However, in the questionnaire reply SAIC reported a different segment for this model. As another example, Polestar 2 is classified in segment D by the EV-database, however both Geely Group (in its questionnaire reply) and S&P Global Mobility reported this model under a different segment. These examples, pertaining to some of the highest volume BEVs imported from China, show that there are no clear and objective criteria, corresponding to observable or measurable technical characteristics, which can be used to classify BEVs into segments. Therefore, the use of such segmentation would not have led to an accurate and meaningful price comparability analysis. In fact, even if it were possible to classify BEVs into segments in an objective and unambiguous way (*quod non*), such classification would be anyhow redundant given the inclusion in the PCN structure of characteristics that correlate highly with any plausible segmentation.

([121]) https://ev-database.org/#sort:path~type~order=.rank~number~desc|make-checkbox-dropdown:pathGroup=.mg|rs-price:prev~next=10000~100000|rs-range:prev~next=0~1000|rs-fastcharge:prev~next=0~1500|rs-acceleration:prev~next=2~23|rs-topspeed:prev~next=110~350|rs-battery:prev~next=10~200|rs-towweight:prev~next=0~2500|rs-eff:prev~next=100~350|rs-safety:prev~next=-1~5|paging:currentPage=0|paging:number=10.

([122]) https://news.mgmotor.eu/press/the-exceptional-design-of-the-mg4-electric-in-detail/

(823) As regards the examples of models provided by the CCCME and the GOC, the Commission first noted as a general remark that the purpose of a PCN is not to serve as a precise predictor of the price of each model. Its purpose is rather to capture the main characteristics that affect price, thereby allowing for meaningful price comparisons and for reliable conclusions when these comparisons are aggregated at the appropriate level, such as in an undercutting calculation. In any event, the examples of models in the list provided by the CCCME and the GOC not only fail to cast doubt on the adequacy of the PCN structure, they actually speak strongly in its favour. The list included the following BYD models and prices: 1) Dolphin Active 44,9 kWh (EUR 29 000); 2) Dolphin Boost 44,9 kWh (EUR 31 000); 3) Dolphin 60,4 kWh (EUR 34 200); and 4) Atto 3 (EUR 38 500). The CCCME stated that even though they have significantly different prices, all models have the same PCN.

(824) The CCCME and the GOC statement is patently incorrect. In fact, under the PCN structure used for the investigation, these four models are classified under *three* different PCNs, by virtue of their differences in *range* and *power* ([123]). Specifically, the corresponding PCNs are as follows: 1) Dolphin Active 44,9 kWh PCN L3R2P1W2; 2) Dolphin Boost 44,9 kWh PCN L3R2P2W2; 3) Dolphin 60,4 kWh PCN L3R3P2W2; and 4) Atto 3 PCN L3R3P2W2. It is easy to see that the more expensive models are those that have PCNs corresponding to superior technical characteristics (i.e. more length, range or power or an all-wheel drive), as it would be expected by a PCN structure that is fit for its purpose. It is also particularly noteworthy that, despite the significant variation in prices, all the listed models are classified by their manufacturer in one and the same segment, i.e. the C segment ([124]). This shows that the Commission followed the right approach with the PCN structure, and that a price comparison relying on segments, even if they could be defined clearly and objectively (*quod non*), would be grossly inadequate and inappropriate. In view of the above, the CCCME and the GOC claims were rejected.

(825) Following definitive disclosure, the CCCME and the GOC claimed that the Commission's statement that there were no universally accepted market segments was (i) not evidenced by any assessment by the Commission and was an unsubstantiated statement made *ex post*, (ii) defied industry logic and its own questionnaire, and (iii) cannot lead to the conclusion that overwhelming evidence warranting a segmented analysis could be overlooked. The CCCME further argued that this was because following the Commission's logic, as PCNs were also not universally accepted and indeed were created by the Commission for this case, the very use of the PCNs cannot be decisive either. The CCCME claimed that it demonstrated that the Commission and leading market publications like S&P Global Mobility as well as the Transport & Environment study and Union producers use the same market segments as noted in the Commission's questionnaire.

(826) These claims are without merit. With respect to point (i) the Commission cannot prove something that does not exist. Apart from the information submitted in the Initiation document, the investigation did not reveal any objective technical characteristics based on each the segments, such as A, B, C etc. or entry, premium, luxury, were defined, nor did the CCCME submit any such evidence. In fact, the CCCME requested the Commission to use it its assessment information that it did not know what it meant. The Commission cannot accept such request. The Commission explained that there were no universally accepted market segments in recital (1042) of the provisional Regulation in reply to claims from interested parties regarding segmentation. Therefore, the CCCME's claim that such statement was made *ex post* is irrelevant. In relation to point (ii) the Commission fails to see how the fact that there are no universally accepted market segments defies logic and the Commission's questionnaire. With regard to point (iii), as explained in recital (108) of the provisional Regulation, the Commission concluded that a segmentation analysis was not needed in this case. Furthermore, the PCN was defined by the Commission based on objective criteria that were disclosed to the Chinese exporting producers in the questionnaire. As explained in recital (1022) of the provisional Regulation, the PCN is used by the Commission for the purpose of making a fair comparison between the imported products and the like products produced by the Union industry, i.e. in the calculation of the undercutting margin. The PCN does not need to be universally accepted as the CCCME's claimed. Therefore, these claims were rejected.

([123]) Where technical characteristics relevant for the PCN classification were not available from BYD's questionnaire reply, they have been obtained from the EV database (http://ev-database.org).

([124]) https://www.byd.com/eu/news-list/BYD_DOLPHIN_Agile_and_Versatile.html.

(827) Following definitive disclosure, the CCCME and the GOC claimed that in a transitioning market, price effects' analysis cannot be based only on the PCN-wise data and undercutting calculation pertaining to only one year of the period considered.

(828) The claim is factually wrong. The Commission did not assess only the undercutting margin but also price suppression for the entire period considered. Therefore, the claim was rejected.

(829) Following definitive disclosure, the CCCME and the GOC claimed that the Commission did not investigate or gather evidence as to whether brand value affected price comparability but merely reversed the burden of proof and placed it on the CCCME.

(830) This claim is without merit. In recital (1037) of the provisional Regulation, the Commission explained extensively its assessment of the impact of the brand value. The Commission did not reverse the burden of proof on the CCCME but noted that the CCCME did not explain how the Commission should take the brand value into consideration for the price comparison. Parties cannot simply ask the Commission to carry out all kind of assessments but not provide their views on how such assessments should be done. Therefore, this claim was rejected.

(831) Therefore, the conclusions set in recitals (1018) to (1049) of the provisional Regulation as revised by recital (57) of this Regulation, were confirmed.

4.5. **Economic situation of the Union industry**

(832) Following provisional disclosure, the CCCME and the GOC claimed that the Commission did not assess the impact of the self-imports on the Union industry's economic situation, notably with respect to production, capacity utilization, sales volumes and prices, market share, and profitability among others. The CCCME and the GOC further claimed that it was not known if any of the sampled Union producers was importing BEVs from China in the period considered.

(833) In view of the anonymity granted to the Union producers and the small number of groups of Union producers that imported BEVs from China during the period considered, the Commission cannot disclose whether the sampled Union producers imported BEVs from China during the period considered. Disclosing such information would mean disclosing whether BMW, Mercedes, Renault or Tesla have been sampled. Nevertheless, as explained in recital (22) of this Regulation, the sampling of the Union producers was done at the level of production entity and not group, while the Union producers are part of larger groups of companies and the imports of BEVs from China were not necessarily made by the producing entities. Furthermore, the injury indicators are solely based on the BEVs produced and sold in the Union by the Union producers. Furthermore, the imports from China of the Union industry as a factor causing a threat of injury to the Union BEV industry has been assessed in recital (1213) of the provisional Regulation and in recitals (1216) to (1223) of this Regulation. Therefore, these claims were rejected.

4.5.1. *General remarks*

(834) No comments concerning this part of the provisional Regulation were received.

4.5.2. *Macroeconomic indicators*

4.5.2.1. Production, production capacity and capacity utilisation

(835) As explained in recital (683) of this Regulation, the Commission revised the production volume for the investigation period based on the data reported by Prodcom for 2023 that became publicly available. It follows that also the data for the production capacity must be revised, as showed in the Table 4 below.

Table 4

Production and production capacity for the investigation period

	Investigation period
Production volume (pieces)	1 590 247
Index (2020 = 100)	*292*
Production capacity (pieces)	4 607 682
Index (2020 = 100)	*280*

Source: Prodcom (see recital (683) of this Regulation).

(836) The Commission noted that there was a small decrease of 2,2 % of the production capacity in the above table as compared to the production capacity stated in Table 4 of the provisional Regulation.

(837) Following provisional disclosure, the CCCME and the GOC claimed that the data provided in the provisional Regulation in relation to production, production capacity and capacity utilisation were unreliable and did not constitute positive evidence that met the requisite legal standards.

(838) In particular, the CCCME and the GOC claimed that (i) the estimated production volumes were unreliable as they were based on Prodcom data and reiterated their claims mentioned in recital (680) of this Regulation that Prodcom data have a scope broader than the product under investigation, (ii) the Prodcom production volume affected also other injury indicators such as production capacity, capacity utilisation and productivity that were estimated based on production volume, (iii) as the production volumes of the Union industry increased at a higher pace than the Union consumption during the period considered, this showed that the Union industry was thriving and was unaffected by imports from China, which was further evidenced by announcements of new BEV launches by Union producers.

(839) As regards the reliability and accuracy of Prodcom data, the Commission addressed these claims in recitals (683) to (689) of this Regulation where it concluded that the Prodcom data was reliable. Moreover, the Commission noted that the mere comparison between the increase in total production and the increase in Union consumption did not allow a conclusion to be drawn on the situation of the Union industry, as it ignored a multitude of other factors and indicators, including the evolution of imports and exports, market shares and profitability. Therefore, this comparison did not call into question the findings on the situation of the Union industry. These findings were also not called into question by the fact that Union producers continued to launch new BEV models in their effort to meet demand and compete in the Union market, despite the challenges they face from low-priced subsidised imports from China. Therefore, these claims were rejected.

(840) Following definitive disclosure, the CCCME and the GOC reiterated that Union industry production increased at a higher pace than Union consumption, and that the Commission failed to explain what it meant by the statement in recital (839) of this Regulation that the assessment of the situation of the Union industry should not ignore the evolution of imports and exports, market shares and profitability, what analysis it conducted in this regard or how it affected the factual matter at hand.

(841) The Commission recalled that the situation of the Union industry and the assessment of injury could not be derived solely from a comparison of the evolution of production and the evolution of consumption but had to take into account the totality of the relevant indicators. These factors have been analysed in detail in Section 4.5 of the provisional Regulation, which also included the conclusion on the situation of the Union industry, which was not suffering material injury during the investigation period. Therefore, the claim was rejected.

(842) Furthermore, following provisional disclosure the CCCME and the GOC claimed that the estimated capacity utilisation was unreliable as (i) it was based only on information provided by the sampled Union producers, (ii) it was based on extrapolation using the total production reported by Prodcom and the capacity utilisation calculated for the sampled producers and such extrapolation would assume that production capacity and capacity utilisation would be the same for all Union producers. The CCCME reiterated this claim after definitive disclosure.

(843) As explained in recitals (26) to (45) of the provisional Regulation, the sample of Union producers was representative for the Union industry. Furthermore, the data provided by these producers have been verified during the investigation. Therefore, the capacity utilisation calculated for the sampled Union producers is the most reliable estimate for the average capacity utilisation of the Union industry. It follows that also the calculation of the total production capacity of the Union industry on the basis of the total Union production and the average capacity utilisation provided the most reliable estimate for the Union production capacity. Contrary to what the CCCME and the GOC suggested, this methodology did not assume that all Union producers have the same capacity utilisation. All the more so, it does not assume that all Union producers have the same production capacity. Finally, the CCCME and the GOC did not submit a better source of data for the capacity utilisation of the Union industry. Therefore, the claim was rejected.

(844) Moreover, following provisional disclosure, the CCCME and the GOC questioned the Commission's finding that BEV production capacity of sampled Union producers has increased by reallocating production lines from production of ICE to BEV, and also questioned that Union producers have the ability or incentives to expand this reallocation in order to meet new demand for BEVs. The CCCME and the GOC also claimed that if the Commission's estimates of production capacity and capacity utilisation were correct, this would mean that the Union industry was suffering from overcapacity and related high costs and would have no incentive to shift more production from ICE vehicles (which are currently more profitable) to BEVs, or to continue importing BEVs from China.

(845) The increase in capacity by means of reallocation of existing production lines from ICE vehicles to BEVs has been confirmed in the context of the Commission's verification visits to the sampled Union producers and their production facilities. The Commission noted that such reallocation did not affect the volume and profitability of the ICE business, as it concerned mainly idle capacity which develops in line with the decline in demand for ICE vehicles. As a result, CCCME and the GOC's argument that Union producers would lack incentives to reallocate more production lines from ICE vehicles to BEVs is refuted by the facts established by the investigation. Moreover, the existence of significant spare capacity of Union producers would not preclude them from importing BEVs from China, in order to be able to compete with the subsidised imports from China. The high spare capacity of the Union industry is in line with the transition of the Union market from ICE vehicles to BEVs. Therefore, these claims were rejected.

(846) Following provisional disclosure the CCCME and the GOC also claimed that (i) in Table 4 of the provisional Regulation the Commission referred to some unspecified Union producers' website and data therefrom and it was not clear what the data in question was, how it was reconciled with the methodology explained in recital (1057) of the provisional Regulation and how the information from those websites contributed to the assessment of the Union industry production capacity and capacity utilisation and (ii) it was not known why the Commission did not rely on the data as regards production and production capacity provided by the Union BEV producers in their sampling forms to calculate the total Union production, production capacity, and capacity utilization – this point was also reiterated by the CCCME following definitive disclosure.

(847) The Commission could not specify the websites of the Union producers that it used to cross check production data for the investigation period as this would mean disclosing which companies submitted a sampling form. As concerns points (ii) the Commission noted that this would mean disclosing the level of cooperation of the Union producers at the sampling stage which would then reveal the identity of the companies that cooperating in the investigation and the Commission would therefore be in breach with the anonymity granted to Union producers as explained in recitals (12) and (13) of the provisional Regulation. Therefore, these claims were rejected.

(848) Following provisional disclosure the CCCME and the GOC also claimed that for the capacity of the sampled Union producers (i) the Commission provided no evidence in support of its statement in recital (1058) of the provisional Regulation that some Union producers were converting ICE vehicles production lines into BEVs production lines and therefore those production lines were dedicated entirely to the BEVs production, (ii) that the extent to which the producers were converting capacity was also not known – this point was also reiterated by the CCCME and the GOC after definitive disclosure and (iii) the Commission provided no basis for its assumption in recital (1060) of the provisional Regulation that more capacity could be allocated from ICE vehicle production to BEVs production in the near future, when according to publicly available information most of the Union BEV producers would continue to produce ICEs, hybrids, etc., potentially for many years ahead and beyond 2035. In particular, the CCCME and the GOC referred to a report by Transport & Environment, which stated that the Union BEV producers' strategy was to 'hold back the sales of EVs until it is required by the Regulation, prioritising profits from ICEs and large, expensive EV models in the meantime' ([125]).

(849) As regards point (i), this information was provided by the sampled Union producers during the on-spot verification. As regards point (ii) referring to the extent to which the producers were converting capacity was also not known as explained in recital (702) of this Regulation the Union market was transitioning from the production of ICE vehicles to BEVs. The purpose of the investigation are the producers of BEVs and not producers of ICE vehicles and BEVs and the Commission investigated the BEVs and not the ICE vehicles. As concerns point (iii) as explained in recital (1223) of the provisional Regulation, pursuant to Regulation (EU) 2019/631, which was later amended by Regulation (EU) 2023/851, the Union industry must increase their sales of BEVs and decrease their sales of ICE vehicles on the Union market. This means that the production of BEVs will increase and the production of ICE vehicles for the sales to the Union market will decrease. Indeed, the Union industry could continue producing ICE vehicles beyond 2035 but not for the sale in the Union, for exports only, which is irrelevant as the main target of the Union industry is the Union market and not third countries. The excerpt quoted by the CCCME and the GOC from the report published by Transport & Environment refers to a stagnation phase between the fourth quarter of 2021 and fourth quarter of 2024. However, as of 2025 there is a growth phase which is triggered by Regulation (EU) 2019/631 as amended by Regulation (EU) 2023/851 which tightened the CO_2 targets as from 2025 as explained in recital (1223) of the provisional Regulation.

(850) Following provisional disclosure, the CCCME and the GOC also claimed that the Commission's estimate of Union industry BEV production capacity and its conclusion that Union producers have sufficient capacity to meet future demand were incorrect, because they did not take into account alleged constraints in raw materials. To support its claims, the CCCME and the GOC quoted reports, comments and publications by the European Court of Auditors and ACEA. The CCCME and the GOC also referred to reports regarding long delivery times for BEVs produced by Union producers, suggesting that they the delays result from such constraints.

(851) The Commission considered that the CCCME and the GOC failed to show that access to raw materials imposes a significant and actual constraint on the Union BEV production capacity and noted that the CCCME and the GOC has not even attempted to quantify such constraint. In this respect, the Commission recalled that the excerpts of the European Court of Auditors report referred to by the CCCME and the GOC concern EU battery production rather than BEV production, and that the Union BEV industry is not limited to using batteries produced in the Union. Also, the ACEA reports and the comments by ACEA representatives on raw materials refer to issues of cost competitiveness rather than issues of production capacity. Moreover, increases in delivery times which are observed in limited periods of time and for specific producers do not constitute evidence of significant or lasting constraints on the Union BEV production capacity. Therefore, these claims were rejected.

([125]) https://www.transportenvironment.org/uploads/files/2024_06_EV_market_briefing.pdf.

(852) Finally, following provisional disclosure the CCCME and the GOC claimed that the evolution of production, production capacity and capacity utilisation disprove the Commission's conclusion stated in recital (1102) of the provisional Regulation regarding the worsening situation of the Union industry, in particular during the investigation period.

(853) The Commission recalled that these conclusions are drawn from the totality of the injury indicators, including those which deteriorated during the investigation period, such as profitability, return on investments, cash flow, and market shares. Therefore, this claim was rejected.

(854) Following definitive disclosure, the CCCME and the GOC claimed that the Commission's statement that the Union producers were transitioning as they were only using the idle ICE vehicle production capacity for BEV production which did not affect the volume of the ICE vehicles produced was not accurate.

(855) This claim is factually wrong. The Commission did not make such a statement. In fact in recital (1058) of the provisional Regulation, the Commission stated that the investigation revealed that some Union producers were converting ICE vehicles production lines into BEVs production lines and therefore those production lines were dedicated entirely to the BEVs production, or they were producing BEVs in their assembly plants alongside ICE vehicles using essentially the same production process in order to leverage existing assets, processes and competencies and provide volume flexibility. Therefore, this claim was rejected.

(856) Following definitive disclosure, the CCCME and the GOC also claimed that rate of capacity conversion of the Union producers was a core factual issue, and the fact that the Commission did not assess it indicates that the Commission's calculations of capacity and capacity utilisation, as well as its claim of transition from ICE vehicles to BEVs were not based on evidence, but on theoretical assumptions. To support its arguments, the CCCME also stated that the post-IP data in Table 6 of this Regulation showed that in the first and second quarters of 2024, the transition to electrification had not increased and the percentage represented by BEVs in all passenger vehicles sales was much lower than the average of 14,6 % for the investigation period.

(857) The Commission noted that the CCCME and the GOC did not explain how the fact that the conversion rate of Union car manufacturers from the production of ICE vehicles to BEVs was not known casted doubts on the Commission's findings on production capacity and capacity utilization, and on the proposition that Union producers are transitioning from ICE to BEV production. As explained in recital (855) of this Regulation, there were several ways in which the Union producers were building production capacity for BEVs. Furthermore, the CCCME seemed to confuse the transition of the Union passenger market from ICE vehicles to BEVs that was provided in Table 1 of the provisional Regulation and Table 6 of this Regulation, with the transition of the Union vehicles producers from production of ICE vehicles to BEVs. The transition of the Union market cannot challenge in any way the Commission's findings on production, capacity and capacity utilisation of the Union industry established for the period considered. Therefore, these claims were rejected.

(858) The provisional conclusions stated in recitals (1055) to (1060) of the provisional Regulation as revised by recital (835) of this Regulation were confirmed.

4.5.2.2. Sales volume and market share

(859) As in the case of the data for the apparent Union consumption for the investigation period as explained in recital (711) of this Regulation and the data of the import volume from China and its market shares based on registrations following importation as explained in recital (723) of this Regulation, in order for the Commission to be able to disclose the underlying data behind the respective calculations, the Commission revised the data of the sales of the Union industry and their market shares based on apparent and actual consumption, using as source EEA instead of S&P Global Mobility that it used in Table 5 of the provisional Regulation.

Table 5

Sales volume and market share

	Investigation period
Sales volume on the Union market (registrations) in pieces	990 289
Index (2020 = 100)	*261*
Market share (of apparent consumption)	59,9 %
Index (2020 = 100)	*87*
Market share (of actual consumption – registrations)	65,2 %
Index (2020 = 100)	*93*

Source: EEA.

(860) The Commission noted that there when comparing the data in Table 5 of the provisional Regulation for the investigation period that used S&P Global Mobility as a source with the respective data in the Table 5 above that used EEA as a source, there was a very small difference for the total sales of the Union industry (0,3 %), no change for the market share based on apparent consumption and a 0,2 percentage points change in the market share based on actual consumption.

(861) Following provisional disclosure, the CCCME and the GOC claimed that (i) the sales volumes and market shares of the Union industry should include the Union industry's self-imports from China – similar claim was also made by VDA – this claim was also reiterated by the CCCME and the GOC following definitive disclosure (ii) the Commission overlooked that the Union industry was export oriented and that the Union industry's exports increased during the period considered which demonstrated that the Union industry focused on increasing exports rather than domestic sales and market share and the Chinese brand and third country BEV imports increased only to fill the gap – this claim was also reiterated by the CCCME and the GOC following definitive disclosure and (iii) the Commission also did not assess any possible impact of the termination of purchase subsidies for EVs in EU Member States such as Germany.

(862) The Commission explained in recital (165) of the provisional Regulation and in recital (833) of this Regulation that the injury indicators, including sales and market shares, are solely based on the BEVs produced and sold in the Union by the Union producers, and that for self-imports the Union industry acts as a trader, not as a producer. Therefore, including so-called self-imports in the calculation of Union sales and market shares would be incorrect. The impact of these imports has been assessed in recital (1213) of the provisional Regulation and recitals (1216) and (1223) of this Regulation.

(863) As regards the arguments in relation to the exports of the Union industry, the Commission noted that sales of the Union industry in the Union market were significantly higher than its export sales, which shows that the Union market remains the most important market for the Union industry. Moreover, in view of the fact that the Union industry was not capacity constrained, exports could not have played a role in the decrease of the Union industry's share in the Union market.

(864) As regards the termination of the purchase subsidies for BEVs, in particular for Germany, the Commission noted these subsidies did not distinguish between BEVs produced in the Union and elsewhere, and that the termination took effect after the end of the investigation period. Therefore, it is difficult to see how the Commission should have taken them into account in its analysis.

(865) In view of the above, the Commission rejected these claims.

(866) Following definitive disclosure, the CCCME and the GOC claimed that the Commission's assumption that Chinese BEV imports jeopardize the Union BEV producers' ability to produce and sell more of the Union production is misplaced because (i) the Union industry's production and sales volumes suggested that the Union BEV producers were able to sell what they produced, (ii) the increase in the Union industry's exports was multiple times the loss of sales incurred due to the loss of market share in the Union market; (iii) Union producers were moving production to third countries and imported BEVs from those third countries, and (iv) rather than trying to achieve scale, Union producers reduce production of specific BEV models and seemed to be focusing on hybrids (referring to the example of Stellantis, which plans to halt production of one BEV and launch several new hybrid vehicles).

(867) As regards point (i), the Commission recalled that in recital (1084) of the provisional Regulation the Commission explained that the Union industry produced mainly based on orders. Therefore, the fact that its entire production is sold is not relevant for the assessment of the Union industry's competition with the subsidised low-prices Chinese imports of BEVs.

(868) As regards point (ii), the Commission noted that the CCCME did not say what conclusions should be drawn from its calculations on the relationship between the actual increase in exports and a theoretical decrease in Union sales, and why. In any event, these calculations are consistent with the Commission's conclusion that the negative trends in the situation of the Union industry are not due to its export performance. In fact, an increase in exports sales helps the Union industry to produce more and cover a larger portion of its fixed costs and therefore decrease the unit production costs for BEVs.

(869) As regards point (iii), it cannot be excluded that the Union producers are moving production to China and other third countries as there is no level playing field on the Union market.

(870) As regards point (iv), the CCCME did not provide evidence showing that there was a systematic reduction of BEV models by Union producers with a shift of focus on hybrids, and only mentioned one example in this regard. But even if this proposition was generally true, it could not be excluded that this decision was caused by the unfair competition that Union BEV producers are facing from Chinese imports of BEVs.

(871) In view of the above, the CCCME and the GOC claims and arguments were rejected.

(872) The provisional conclusions stated in recitals (1061) to (1064) of the provisional Regulation as revised by recital (859) of this Regulation were confirmed.

4.5.2.3. Growth

(873) In the absence of comments, the conclusions set out in recitals (1065) to (1067) of the provisional Regulation were confirmed.

4.5.2.4. Employment and productivity

(874) Following provisional disclosure, the CCCME and the GOC also claimed that the data provided in the provisional Regulation on employment and productivity do not constitute positive evidence because they are based on the data of sampled Union producers. The CCCME and the GOC also stated that it was not clear why the Union industry employment increased by over 190 % in the period considered as the Union industry was simply switching ICE production lines to BEV production and the employment seemed to have increased in line with the production capacity but as the production capacity was only 35 % utilized it was not clear why there was a need for the Union industry to increase employment so drastically since such an increase in employment would only lead to higher production costs and the increase in productivity was much lower and not in line with that of an efficient industry.

(875) As explained in recitals (26) to (45) of the provisional Regulation, the sample of Union producers was a representative sample of the Union industry and the data of the Union producers have been verified. Therefore, the calculation of Union industry employment and productivity on the basis of these data provides the most reliable data for these indicators. The Commission noted that the CCCME and the GOC did not submit any more accurate data in this regard.

(876) As regards the increase in employment, the Commission noted as explained in recital (1070) of the provisional Regulation, employment broadly followed the trend in production. Moreover, the Commission recalled that the scope of the provided employment data encompasses only the BEV related activities of Union producers, and that these data do not include personnel employed by these producers in other activities, such as production of ICE vehicles. In view of this, as explained in recital (1071) of the provisional Regulation, the increase in employment of the BEV Union industry can be easily explained by the reallocation of existing personnel from ICE vehicles production to BEV production. The Commission also noted that the CCCME and the GOC did not specify how much employment an efficient industry should have. Therefore, these claims were rejected.

(877) Following definitive disclosure, the CCCME and the GOC claimed that the explanation provided by the Commission in recital (875) of this Regulation regarding the high rate of increase in the Union industry employment was inadequate as the data did not make economic sense, was unlikely to be representative of the Union industry and was not in compliance with the objective examination of positive evidence obligation that was not a tick-the-box exercise.

(878) The CCCME and the GOC failed to explain why in their view the data on employment did not make economic sense. As explained in recital (876) of this Regulation, the employment broadly followed the trend in production. The CCCME also did not explain why the data was unlikely to be representative of the Union industry. Therefore, the claim was rejected.

(879) Therefore, the provisional conclusions set in recitals (1068) to (1072) of the provisional Regulation were confirmed.

4.5.2.5. Magnitude of the subsidy amount and recovery from past subsidisation

(880) In the absence of comments, the conclusions set out in recitals (1073) to (1074) of the provisional Regulation were confirmed.

4.5.3. *Microeconomic indicators*

4.5.3.1. Prices and factors affecting prices

(881) Following provisional disclosure, the CCCME and the GOC claimed that the data provided in the provisional Regulation on prices and factors affecting prices do not constitute positive evidence as (i) the Union sample was not objective, (ii) the Commission did not perform an analysis on the basis of segments.

(882) The claim regarding the representativity of the sample of Union industry has already been discussed in recitals (26) to (45) of the provisional Regulation while the segmentation argument has also been discussed and rejected in recital (749) of this Regulation.

(883) The CCCME and the GOC also claimed that the Chinese BEVs could not have an impact on the prices of the Union industry as the Union industry's prices were rising in parallel with the increase in imports from China which were mostly self-imports and were accompanied by an increase in its sales volume.

(884) As explained in recital (1076) of the provisional Regulation, the increase in prices of the Union industry was affected by changes in the mix of models sold by the sampled Union producers over the period considered, especially bearing in mind that the Union market is gradually transitioning from ICE vehicles to BEVs, and new models were being launched and sold throughout the period considered. Furthermore, contrary to the CCCME and the GOC's suggestion, the fact that imports from China and Union prices had been both rising during the same period did not imply that these imports did not have an impact on prices. This is because of the subsidised imports from China which undercut significantly the Union industry's prices, the Union industry was prevented from setting prices to customers at profitable levels as explained in recital (1100) of the provisional Regulation. Therefore, this claim was rejected.

(885) The CCCME and the GOC disputed the Commission's statement in the provisional Regulation that usually increases in prices lead to a reduction in sales quantities.

(886) The Commission noted that the statement simply reflected to a basic principle in economic theory, known as the law of demand, which is backed by ample empirical evidence. The Commission further noted that while there were exceptions to this law ([126]), they would not concern the vast majority of BEVs sold in the Union market. Moreover, the Commission clarified that the inherent assumption in this law was that all other relevant factors did not change (*ceteris paribus* principle), including notably customer demand. In the case of the Union BEV market, it was clear that over the period considered, there had been a considerable boost of demand for BEVs, which allowed prices and quantities to rise simultaneously. This did not call into question the basic principle that, at a given moment in time, and all other things being equal, an increase in prices would lead to a decrease in sales quantities. Therefore, this claim was rejected.

(887) Following definitive disclosure, the CCCME and the GOC claimed that the Commission explained the increase of sales prices of 38 % during the period considered by the change in product mix and a principle of economic theory which conflicted with the evidence on record as (i) the Commission collected PCN or product mix data from the sampled Union producers only for the investigation period and there was no evidence that it collected or had such granular data concerning the product mix for the period 2020-2022 and (ii) even assuming that there was a difference in the model mix sold, the absolute increase in the unit sales prices cannot be overlooked and it was EUR 1 699/unit higher than the increase in the average production cost over the same period and it did not negate the fact that for the different models sold, the Union producers were able to increase sales prices and volumes. Furthermore, the CCCME and the GOC claimed that the basic principle of economic theory that the Commission referred to did not apply in the configuration of the facts pertaining to the investigation period in this case as it was perfectly possible, and even highly likely, that the *ceteris paribus* assumption was violated over that period. The CCCME further stated that if from the first year to the next, demand increased, the shift in the equilibrium would be along the supply curve, not the demand curve, and an increase in price could very well coincide with an increase in quantity sold.

(888) The Commission did not need to collect PCN data or product mix data from the sampled Union producers to conclude that during the period 2020 – 2022 the Union industry launched new BEVs model on the market as such information was publicly available as indicated in footnote 431 of the provisional Regulation. Furthermore, the fact that during the period considered the unit weighted average selling price increased slightly more than the unit weighted average unit cost (5 % as compared to the selling price or 4 % as compared to unit costs of production), does not invalidate the fact the Union industry was significantly loss making and the financial losses of the Union industry started to increase in the investigation period. Furthermore, the Commission also noted that in its comments following definitive disclosure the CCCME did not seem to question that the law of demand generally holds, that is, that increases in prices usually lead to decreases in quantities, in line with what the Commission stated in the provisional Regulation. Moreover, the CCCME seems to agree that the simultaneous rise in prices and quantities that was observed over the period considered happened not because prices have no effect on quantities, but because other factors, and in particular a boost of demand, had an even stronger opposite effect. This in no way invalidates the relationship between prices and quantities described by the law of demand. Therefore, the claims were rejected.

(889) Following provisional disclosure, the CCCME and the GOC also stated that the Commission had not provided the basis and methodology according to which the costs were allocated to BEV production and had not undertaken any assessment of the rationality of the costs and the other factors affecting prices.

(890) In recital (1077) of the provisional Regulation, the Commission explained that the cost of production was the full cost of production of the BEVs sold including components and raw materials, other manufacturing costs and selling general and administrative costs (SG&A) including research and development (R & D) expenses. When certain costs had to be allocated to the BEVs, the instructions provided in the published questionnaire for the Union producers requested the Union producers to allocate costs that are common to different types of products (including products other than the product under investigation) using the methodology normally employed by their cost accounting system, and to justify any deviation from that principle. Therefore, the claim was rejected.

([126]) Such as 'Veblen goods' and 'Giffen goods'.

(891) Following provisional disclosure, the CCCME and the GOC further claimed that there were mismatches in the data of the labour costs provided in the provisional Regulation and the labour costs provided in the consolidated open version of the questionnaire replies of the Union producers.

(892) The Commission noted that it failed to identify any mismatch and that the CCCME and the GOC apparently conflated the trend of the average labour cost reported in Table 8 of the provisional Regulation with the trend of the total labour cost (which rises much faster due to the increase in the number of employees) reported in the consolidated open version of the questionnaire replies. Therefore, the claim was rejected.

(893) Furthermore, the CCCME and the GOC claimed that the Commission should have adjusted the costs of the Union industry downwards to take into account the high costs due to the fact that the sampled Union producers were in transition. The CCCME and the GOC also stated that the Commission had acknowledged in the provisional Regulation that the fixed costs of the Union industry are high and claimed that these high costs should be attributed to the conscious choice of the Union industry to focus on premium and luxury BEV models, unlike Chinese exporting producers.

(894) As explained in recital (702) of this Regulation, the Union market was transitioning from the production of ICE vehicles to BEVs and the Union producers for the purpose of this investigation are producers of BEVs and not all of kind of vehicles. Furthermore, the Commission observed that, other things being equal, companies that are switching between products that have significant commonalities in components and production processes would generally enjoy cost advantages in the production of the new product over 'greenfield' companies which start from the beginning. As an example, the Union industry was able to use its existing production plants for ICE vehicles. As regards the comment that the provisional Regulation qualifies the fixed costs of the Union industry as high, and that these high costs should be attributed to the Union industry's conscious choice to focus on premium and luxury cars, the Commission made several observations. First, the comment misrepresented the recital (1078) of the provisional Regulation which merely noted that the BEV industry, like all heavy industries all over the world, has high fixed costs. That statement does not refer specifically to the BEV industry of the Union and certainly not in comparison to the BEV industry of third countries, including China. Second, contrary to what these parties suggest, it is typically the production of the mass market products that comes with relatively high fixed costs (bigger plants, more equipment etc.), while luxury products are usually made with relatively limited fixed costs and high variable costs (e.g. due to expensive materials and/or intensive and high-skilled labour). In any event, the statement that the Union industry focused on the premium and luxury BEVs is refuted by the high level of matching between the Union industry sales and the Chinese imports (discussed in recitals (1044) to (1048) of the provisional Regulation). Therefore, these claims were rejected.

(895) Moreover, the CCCME and the GOC claimed that the Commission did not (i) assess the impact of raw material costs on prices and the ability of the Union producers to pass on these costs to consumers, (ii) consider the high fixed costs of the Union industry on account of overcapacity and high employment – this claim was also reiterated by the CCCME and the GOC after the definitive disclosure, (iii) consider the impact of intra-industry competition on prices – this claim was also reiterated by the CCCME after the definitive disclosure. In this regard, the CCCME and the GOC added that the Commission did not provide any evidence of its statement that the competition was strong and fair.

(896) The Commission noted that there is no requirement, neither in the basic Regulation nor in the SCM Agreement, for a detailed assessment or quantification of the impact of the different factors affecting prices. These factors, including such as raw materials costs (which are typically variable costs) and fixed costs have been identified and sufficiently analysed in recitals (1077) to (1080) of the provisional Regulation. As regards the alleged failure to take into account the competition between Union producers, as explained in recital (773) of this Regulation the Commission's view is that although such competition is strong, it is fair competition that has developed to the benefit of Union consumers. The investigation did not reveal any evidence contrary to this. It is recalled that the subsidised imports from China undercut the Union industry prices by at least 12,7 % in the investigation period. By contrast, the subsidised imports have penetrated the Union market taking advantage of the heavy subsidisation provided by the GOC. Moreover, the Commission recalled that BEV imports from China and other countries

cannot be considered as part of the intra-Union industry competition, even when these imports are made by Union producer groups. It is also noted that raw material costs and the competition between Union producers was addressed under causation in recitals (1206) and (1224) to (1225) of this Regulation respectively. The alleged overcapacity of the Union industry was addressed in recital (845) of this Regulation. Therefore, these claims were rejected.

(897) Following definitive disclosure, the CCCME and the GOC claimed that (i) the Union industry was faced with high input costs and the Commission had provided no evidence to disprove this and (ii) the Commission's attempt to argue that the fixed costs of the Union industry were not high was lacking evidence, was in conflict with other findings of the investigation and puts into question the Commission's whole theory of transition.

(898) Contrary to what the CCCME and the GOC suggested, the Commission did not argue that the production costs of the Union industry, and specifically the input costs and fixed costs, were not high. In fact, in recital (1078) the provisional Regulation, the Commission stated that the BEV industry is a capital-intensive industry with high fixed costs. Therefore, these claims were rejected.

(899) Therefore, the provisional conclusions set in recitals (1075) to (1080) of the provisional Regulation were confirmed.

4.5.3.2. Labour costs

(900) Following provisional disclosure, the CCCME and the GOC claimed that (i) it was not clear how the labour costs were allocated to the cost of production of BEVs and reiterated their claim stated in recital (890) of this Regulation and (ii) the Commission did not explain in the provisional Regulation why the labour costs increased in the period considered which was higher than the inflation rates in the Union and more than the rate of increase in salaries in the Union.

(901) As regards the allocation of labour costs to BEVs, the Commission recalled that in the questionnaire for the Union producers, the Union producers are requested to report the total cost of any labour, which can be identified or associated with the product under investigation. Furthermore, if the Union producers need to allocate costs that are common to different types of products (including products other than the product under investigation) they are requested to use the methodology normally employed by their cost accounting system, and to justify any departure from that principle. In the case at hand certain labour costs have been allocated to BEVs on the basis of production volume. Furthermore, the claim stated in recital (890) of this Regulation, this claim has been discussed and rejected in recital (891) of this Regulation.

(902) As regards the claim on the increase of labour costs provided in the provisional Regulation, the Commission noted that the CCCME and the GOC compared the increase in labour costs over three years period of the Union industry with the inflation rate from one year to the other in the Euro area or the increase in the labour costs for one year to the other which was not correct. Such a comparison should be made with the compound annual growth rate ([127]) over the period considered which was about 8 % which was not out of line with the evolution of the overall labour costs in the Union, taking into account that, as explained in the report quoted by the CCCME and the GOC, this evolution exhibited significant variation across sectors and countries, with some countries reaching in the second quarter of 2023 levels of nominal wage growth of 13 %-19 %. Therefore, the Commission considered that contrary to what the CCCME and the GOC claim, the reliability of the labour cost data provided in the provisional Regulation was not called into question.

(903) In view of the above, the Commission rejected these claims.

([127]) The compound annual growth rate is the average annual growth rate over a period longer than one year.

(904) Following definitive disclosure, the CCCME and the GOC claimed that the Commission could criticize the CCCME and the GOC for misunderstanding the labour costs, but the underlying factual issue was that the labour costs increased by 24 % over the period considered, with a 13 % increase between 2022 and the IP and these high increases could not be justified by the compounded annual growth rates noted by the Commission. Furthermore, the CCCME and the GOC stated that according to Eurostat, the compounded annual growth rate for labour costs for the manufacturing industry in the Union was 3 % which was lower than the 8 % noted by the Commission.

(905) The Commission did not criticise the CCCME and the GOC for misunderstanding the labour costs, it merely pointed out the error the CCCME and the GOC made in reply to CCCME and the GOC's claim stated in recital (891) of this Regulation. Furthermore, the Commission noted that the compounded annual growth rate of the manufacturing sector in the Union was 4,3 % over the period considered ([128]), rather than 3 % as claimed by the CCCME and the GOC. Moreover, the Commission noted that the BEV industry is a new industry, driven by innovation and technology, and therefore requires labour with higher skills implying higher cost, compared to the average industry of the manufacturing sector, including for instance steel and chemicals. Therefore, the claims were rejected.

(906) Therefore, the provisional conclusions set in recitals (1081) to (1082) of the provisional Regulation were confirmed.

4.5.3.3. Inventories

(907) Following provisional disclosure, the CCCME and the GOC stated that as the Commission stated in recital (1085) of the provisional Regulation, that the stocks increased reflecting the increase in production, this confirmed that the BEVs imports from China were not the explanatory force of the increase.

(908) The Commission did not dispute the fact that as stated in recital (1085) of the provisional Regulation, the closing stocks of the sampled Union producers increased by 239 % over the period considered reflecting the increase in production over this period.

(909) Therefore, the conclusions set out in recitals (1083) to (1085) of the provisional Regulation were confirmed.

4.5.3.4. Profitability, cash flow, investments, return on investments and ability to raise capital

(910) Following provisional disclosure, the CCCME and the GOC reiterated their statements that the provisional Regulation did not explain how costs were allocated to BEVs and whether any adjustments were made and claimed that this prevented interested parties from commenting on the reliability of the profitability data.

(911) The issue of allocation of costs to BEVs and the necessity for adjustments has been addressed in recitals (886) and (901) of this Regulation.

(912) Following provisional disclosure, the CCCME and the GOC also claimed that the Commission's findings on negative profitability of the Union industry was contradicted by public market information and quoted reports and statements made by Stellantis, BMW, Renault and SEAT (incorrectly attributed to Renault).

(913) The Commission first noted that the sampled Union producers are part of large groups of companies and report their financial results consolidated at the group level, with a very wide product and geographical scope. Therefore, the profitability of these groups is not the same with the profitability of the sampled Union producers. Second, the Commission noted that the different parts of financial and market reports of some Union producers used by the CCCME and the GOC in this regard did not refer to the profitability of BEVs in the Union. Therefore, the CCCME and the GOC misrepresented these reports, and the claim was rejected.

([128]) https://ec.europa.eu/eurostat/databrowser/view/teilm140__custom_12792223/default/table?lang=en.

(914) Following definitive disclosure, the CCCME and the GOC claimed that in the dismissal of its arguments in recital (913) of this Regulation, the Commission switched between producer companies and groups, and likely sampled the poorly performing entities in the Union BEV producer groups concerned.

(915) These claims are without merit. Contrary to the CCCME and the GOC's claim, the Commission did not switch between producer companies and groups. The Commission simply stated that the press article referred to by CCCME and the GOC talked about the profitability at group level and was not limited to BEVs, while the sampling was done at the level of producing entities and it covered only the profitability of BEVs. Furthermore, regarding the claim that the Commission sampled the poorly preforming entities in the Union, such claim is simply speculative. It is recalled that the investigation was initiated *ex officio* and in the Initiation document the Commission had very limited information concerning the profitability of the BEV industry. Furthermore, the Commission did not even request information concerning the profit margin in the sampling form for the Union producers. Therefore, these claims were rejected.

(916) Following provisional disclosure the CCCME and the GOC also claimed that the Chinese imports were not the explanatory force of the financial losses suffered by the sampled Union producers during the period considered as (i) the Union industry was loss-making even at the beginning of the period considered when BEV imports from China and particularly the Chinese brand BEV imports were negligible, (ii) the Union BEV industry's losses decreased by 52 % over the period considered and (iii) the Union industry's profitability trend moved in an opposite direction from the trend of Chinese BEV imports, which increased over the period considered.

(917) The Commission disagreed with this claim. As explained in recital (1088) of the provisional Regulation, the Union industry was indeed loss-making throughout the period considered and such losses overall decreased over that period. However, the losses incurred by the Union industry started to increase in the investigation period when it could be observed the highest volumes of Chinese imports and the highest drop of market share by the Union industry as explained in recital (1102) of the provisional Regulation. Therefore, this claim was rejected.

(918) Following definitive disclosure, the CCCME and the GOC claimed that following provisional disclosure they argued that the Union industry was loss-making even at the beginning of the period considered when BEV imports from China, and particularly the Chinese brand BEV imports, were negligible and that the Commission disagreed with this claim.

(919) This claim is factually wrong. The Commission did not disagree with the fact that the Union industry was loss making in 2020 when the market share of the imports from China was 3,9 % based on apparent Union consumption or 3,5 % based on actual Union consumption. In fact, as stated in recital (916) of this Regulation, the CCCME actually claimed that the Chinese imports did not have explanatory force over the financial losses suffered by the sampled Union producers during the period considered. The Commission disagreed with such a claim, as explained in recital (917) of this Regulation.

(920) Furthermore, after the definitive disclosure, the CCCME and the GOC claimed that the single-year analysis of the Commission did not take into account several key factors which showed that there was no correlation between the increase in financial losses of the Union industry in the investigation period and the Chinese BEV imports' market share, and it conflicted with the other findings of the Commission and the quarterly IP data provided by the Commission. The alleged facts on which CCCME and the GOC based their claims included (i) the fact that the Chinese BEV imports only marginally increased between 2022 and the IP, i.e. by around 1 %, and out of the 22,8 % market share of the Chinese BEV imports, two-third, pertained to self-imports by the Union industry, (ii) the fact that the highest drop in the Union industry's market share did not occur in the investigation period but in 2021, and between 2020-2021, the Union industry reduced losses by 51 % not-withstanding the highest loss in market share in that period, i.e. 70,4 % to 66,5 %, (iii) the fact that a comparison of the quarterly data of the Chinese BEV imports and the Union industry sales further contradicted the Commission's statement and showed

that there was no correlation between the market shares of the Chinese and Union producers' BEV sales (in particular, in the first and second quarters of 2023, the Union BEV producers had a higher market share of 65,6 % and 66,5 % respectively and could increase market share compared to their average market share in 2022, i.e. 65 %, notwithstanding that in first quarter of 2023 the Chinese BEV imports' market share was 24,5 %, i.e. above their average market share in 2022, and in the third quarter of 2023 ([129]) the Chinese BEV imports' market share dropped to 22 % and reached the average market share as in 2022, but in the third quarter of 2023 the Union industry also lost market share and had 64,6 % market share), (iv) the fact that quarterly data in the investigation period for Chinese imports market share, Union industry market share, profitability of the Union industry, and costs of the Union industry showed that the real reason for the profitability drop was the cost increase, and (v) the Commission's determination that the increase in the financial losses in the investigation period occurred when the Chinese BEV imports had the highest market share was contradicted by the Commission's statement in recital (961) of this Regulation on the time passed between order and delivery.

(921) Concerning point (i), the Commission noted that the CCCME and the GOC's quantification (1 %) as well as its qualification ('marginal') of the increase in imports from China between 2020 and the investigation period were patently incorrect. As can be seen from Table 2a of the provisional Regulation, Chinese BEV imports rose from 256 712 units to 412 425 units, i.e. an increase of 61 % which is significant.

(922) Concerning point (ii), the Commission confirmed that based on the apparent consumption, the highest decrease in the Union industry's market share from one year to the other occurred between 2022 and the IP, from 64,3 % to 59,9 % (Table 5 of the provisional Regulation). However, in recital (1102) of the provisional Regulation the Commission did not make such point i.e. drop in market share from one year to the other. The point was that in the investigation period the market share of the Union industry was the lowest in the period considered.

(923) Concerning point (iii), while the negative correlation between quarterly Union industry market share and the quarterly Chinese imports market share based on actual consumption is not strong, the respective negative correlation based on apparent consumption is very strong ([130]).

(924) Concerning points (iv) and (v), as it was explained in recital (961) of this Regulation, there was a 6-month gap between the order of the customer and the delivery of the BEV to the customer and therefore the profitability of the Union industry in the last quarter of 2023 was not directly the result of the price pressure exercised by the Chinese subsidised BEVs sold on the Union market in the last quarter of 2023 but before that. Moreover, as explained in recital (975) of this Regulation the highest losses were recorded by the Union industry in the third quarter of 2023 (20,5 %) and was correlated with the market share of the Chinese imports in the first quarter of 2023 when the market share of the Chinese imports increased to 24,5 %. Therefore, it was not clear what contradiction the CCCME referred to. Moreover, as regards the increase in costs and the drop in profitability of the Union industry, the Commission explained in recital (1078) of the provisional Regulation the reasons for the variations in the cost. Furthermore, as the Union industry is capital intensive the quarterly unit cost of production is also influenced by the volume of production, the higher the production volume the lower the unit costs of production, all other factors remaining the same. In addition, as explained in recital (1003) of the provisional Regulation, the Union industry mainly works on orders and therefore the volume of production is correlated to the volume of orders. If the Union industry does not have enough orders due to the unfair competition from the low-prices subsidised imports from China, the volume of production decreases and the unit cost of production increases (all other factors remaining the same).

([129]) In the claim it was specified 2024, however the Commission believed that it was a clerical typo as the third quarter of 2024 was not covered by the investigation.

([130]) The correlation coefficient is a measure of the strength and direction of the relationship of two variables and can range from +1 (perfect positive correlation, i.e. the two variables move perfectly in the same direction) to -1 (perfect negative correlation, i.e. the two variables move perfectly in the opposite direction). The correlation coefficient between the quarterly Union industry market share and the quarterly Chinese imports market share based on apparent consumption is – 0,78, suggesting a strong negative correlation, i.e. when the Union market share increases, the Chinese market share decreases.

(925) Therefore, these claims were rejected.

(926) Following provisional disclosure, the CCCME and the GOC also claimed that the Commission stated in the provisional Regulation that the Union industry's profitability was impeded by the Chinese BEVs imports' increasing market share in the investigation period but did not take into account that the investments, production capacity and production costs of the Union industry were the highest in the investigation period.

(927) This claim is factually wrong. First of all, the investments were not the highest in the investigation period, they were the highest in 2020. Secondly, in recital (1102) of the provisional Regulation that Commission indeed stated that the Union industry's profitability was impeded by the Chinese BEVs imports' increasing market share in the investigation period. However, the Commission reached this conclusion based on the totality of the injury assessment as clearly explained in recitals (1095) to (1102) of the provisional Regulation.

(928) The CCCME and the GOC claimed that in recital (1078) of the provisional Regulation the Commission acknowledged that the financial losses suffered by the sampled Union producers were caused by the increased battery, other component costs, high electricity costs as well as that overcapacity resulted in higher costs of production.

(929) This claim is factually wrong. In recital (1078) of the provisional Regulation, the Commission explained the costs components that increased and the ones that decreased the cost of production for the Union industry. Therefore, this claim was rejected.

(930) The CCCME and the GOC claimed that the investments made, and the future investments committed by the Union industry was a clear sign of a confident, healthy and booming industry, which was the very opposite of an industry that was suffering from a threat of injury.

(931) In a market with highly complex products, rapidly changing technology and fierce competition (including from subsidised imports), maintaining an appropriate level of investment is a question of survival. Therefore, during the period considered, the Union producers had no other option but to invest, in order to maintain their market position. However, these investments will cease in the future due to the subsidised imports from China at undercutting prices sold on the Union market. Therefore, this claim was rejected.

(932) Following definitive disclosure, the CCCME and the GOC claimed that the Commission's statement in recital (931) of this Regulation that the investments will cease in the future due to the subsidised imports from China was purely speculative and refuted by a number of announcements and reports of June and July 2024 regarding new investments by BMW (new battery plants), Renault (new Twingo production), Volkswagen (batteries production in partnership with QuantumScape and investment in joint venture with Rivian) and Stellantis (battery production with CATL).

(933) The Commission noted that an industry that remains unprofitable will eventually have to cease investing and that this proposition cannot be considered controversial or speculative. As the investigation has shown, the rapid rise of Chinese imports detracted the Union BEV industry from its path towards profitability. Moreover, the Commission noted that three out of the five announcements and reports provided by the CCCME concern batteries, rather than BEV production. The only announcement which concerns Union BEV production is the announcement on the production of the new Twingo. The production of this BEV will be made in an existing plant (Novo Mesto in Slovenia), which is already owned by Renault and already in operation, having produced electric Twingo, conventional Twingo and Clio models. Therefore, production is likely to require only an incremental investment. The announcement of Volkswagen on the production of batteries based on QuantumScape technology has been already made obsolete by a new announcement on the significant scaling back of the EU part of this investment ([131]). As regards its announcement for a joint venture with Rivian, there is

([131]) https://www.reuters.com/business/autos-transportation/volkswagens-german-battery-plant-stay-half-capacity-amid-cost-pressures-2024-09-06/

no indication that it concerns production of BEVs in the Union. In fact, recent market reports refer to Volkswagen's plans to close a number of historical production plants in Germany, 'as it attempts to streamline spending to survive the transition to electric cars' ([132]). Finally, it is very telling that the main subject of the report on Stellantis' partnership with CATL is the fact that ACC, the battery producer owned by Stellantis and Mercedes, 'has paused work on factories in Germany and Italy' ([133]). As a matter of background and explanation for this pause, the report mentions that 'European manufacturers are under pressure from growing exports by Chinese companies'. In view of the above, the Commission considered that these announcements and reports not only do not refute, but rather confirm its findings on the slowdown, and if unfair competition from subsidised Chinese BEVs is allowed to continue, the eventual cessation of investments of the Union BEV industry will materialise.

(934) Following provisional disclosure, the CCCME and the GOC claimed that it was logical that the return of investments was negative as it took time for the investments to become profitable. Furthermore, the CCCME and the GOC argued that (i) the return of investments was also negative at the beginning of the period considered (and to a much greater extent compared to the end of the investigation period) and (ii) the overall improving trend of this factor during the period considered demonstrated that the Chinese brand BEVs were not impacting the growth of the Union industry and were not the explanatory force for the allegedly deteriorating situation of the Union BEV industry.

(935) The Commission noted that in 2020, which was the starting point of the period considered, profitability and the return of investments were exceptionally low, because the Union industry was in its very early stages of development when the Union market transition was only 5,4 % as explained in Table 1 of the provisional Regulation. The overall improvement of some indicators over the period considered is to a large extent resulting from this very low starting point used in the comparison. The Commission also recalled that as explained in recital (1102) of the provisional Regulation, the big increase in Chinese imports happened towards the end of the period considered, at the same time when these indicators stopped improving and started to deteriorate, showing a clear causal relationship. Therefore, this claim was rejected.

(936) The CCCME and the GOC also claimed that the Union industry's ability to raise capital was not duly assessed by the Commission in the provisional Regulation, was not objective and contradicted other findings in the provisional Regulation. In particular, the CCCME and the GOC stated that apart from the fact that the losses over the period considered decreased, the Union industry's ability to raise capital remained high and the Union industry continued to invest in BEV production as explained in recitals (1091) and (1092) of the provisional Regulation.

(937) Firstly, as explained in recital (930) of this Regulation in a market with highly complex products, rapidly changing technology and fierce competition (including from subsidised imports), maintaining an appropriate level of investment is crucial. Therefore, during the period considered, Union producers had no other option but to invest, in order to maintain their market position and continue with their process into full electrification. Secondly, as explained in recital (1094) of the provisional Regulation, Union producers were able to raise the funds necessary for these investments from the profits achieved by their parent groups, and which came from other activities, including notably the ICE vehicles business. Third, the Commission recalled that its conclusion on the ability of the Union industry to raise capital referred to the future, rather than to the period considered as stated in recital (1094) of the provisional Regulation. Therefore, the claim was rejected.

(938) Therefore, the conclusions set out in recitals (1086) to (1094) of the provisional Regulation were confirmed.

([132]) https://www.reuters.com/business/autos-transportation/volkswagen-warns-possible-plant-closures-germany-2024-09-02/
([133]) https://www.reuters.com/business/autos-transportation/ev-battery-maker-acc-halts-german-factory-delays-italy-plant-2024-06-04/

4.5.4. *Developments in the investigation period and in the post-investigation period*

(939) The Commission continued its prospective analysis after the imposition of the provisional measures, by collecting data for the fourth quarter of 2023 (Q4 2023) and the first quarter of 2024 (Q1 2024) on imports (volume and prices) of BEVs from China and their market share ('post-IP data'). The Commission also sent additional questions to the sampled Union producers for data for the last quarter of 2023 (Q4 2023) and the first quarter of 2024 (Q1 2024). Full data for the first quarter of 2024 was not available.

Consumption and imports from China

(940) As explained in Table 2a of the provisional Regulation, imports from the country concerned and its market share increased significantly from 21 243 to 412 425 pieces and from 3,9 % to 25,0 % respectively between 2020 and the investigation period. Furthermore, as explained in Table 2b of the provisional Regulation, the imports from the country concerned based on the number of registrations also increased significantly from 18 934 to 346 345 pieces and from 3,5 % to 22,8 % respectively between 2020 and the investigation period.

(941) The Commission collected post-IP import data for the last quarter of 2023 and the first quarter of 2024. The Commission also used data for the second quarter of 2024 (2024 Q2) when it was available. Quarterly data for the investigation period is also shown below in order to examine this period more closely and to give context to the post-IP data.

(942) A quarterly view of Union consumption for the investigation period and two quarters post-IP developed as follows:

Table 6

Union consumption (pieces)

	Investigation period				Post – IP		
	2022 Q4	2023 Q1	2023 Q2	2023 Q3	2023 Q4	2024 Q1	2024 Q2
Apparent Union consumption	425 259	373 488	433 276	420 084	432 023	359 881	NA
Index	*100*	*88*	*102*	*99*	*102*	*85*	*NA*
Actual Union consumption (registrations of BEVs) ([134])	406 890	320 987	382 599	408 606	426 429	332 999	379 638
Index	*100*	*79*	*94*	*100*	*105*	*82*	*93*
registered BEVs as a % of all passenger vehicle registrations	16,5	12,1	13,7	16,3	16,4	12,0	13,0

Source: ACEA, EEA, S&P Global Mobility, and Member States Customs data.

([134]) https://www.acea.auto/files/20230201_PRPC-fuel_Q4-2022_FINAL-1.pdf
https://www.acea.auto/files/20230419_PRPC_2303-FINAL.pdf
https://www.acea.auto/files/20230719_PRPC_2306-FINAL.pdf
https://www.acea.auto/files/Press_release_car_registrations_September_2023.pdf
https://www.acea.auto/files/Press_release_car_registrations_full_year_2023.pdf
https://www.acea.auto/files/Press_release_car_registrations_March_2024.pdf
https://www.acea.auto/files/Press_release_car_registrations_June_2024.pdf
To be noted that the data reported by ACEA slightly differs from one source to the other.

(943) Apparent Union consumption fluctuated in the six quarters analysed. Apparent consumption in the fourth quarter of 2023 was slightly higher than the quarterly average of the investigation period (413 027 pieces) and then it decreased by 15 % as compared to the first quarter of the investigation period (fourth quarter of 2022).

(944) Actual consumption also fluctuated in the seven quarters analysed. With the exception of the first quarter of 2024, the apparent consumption in the last quarter of 2023 and the second quarter of 2024 was higher than the quarterly average of the investigation period (379 771 pieces).

(945) Based on the quarterly data, the Commission noted that there seems to be a particular pattern in the data for both apparent and actual consumption that is consistent in the respective quarters of the IP and post-IP. Table 6 shows that both the apparent and actual consumption is the lowest in the first quarter of the year and then it constantly increases in the following quarters. Furthermore, the consumption in the first quarter of the year is lower than the consumption in the last quarter of the previous year.

(946) A quarterly view of imports into the Union from the country concerned on the basis of Member State customs data developed as follows:

Table 7a

Import volume in pieces and market share

	Investigation period				Post-IP	
	2022 Q4	2023 Q1	2023 Q2	2023 Q3	2023 Q4	2024 Q1
Volume of imports from the country concerned (pieces)	109 065	98 423	116 115	88 822	109 711	93 751
Index	*100*	*90*	*106*	*81*	*101*	*86*
Market share	25,6 %	26,4 %	26,8 %	21,1 %	25,4 %	26,1 %
Index	*100*	*103*	*104*	*82*	*99*	*102*

Source: Member States Customs data.

(947) On a quarterly basis, as showed in Table 7a of this Regulation, the volume of imports from China fluctuated during the investigation period. As the investigation was initiated on 4 October 2023 and the vessels transporting BEVs from China need about 4-6 weeks to arrive in the Union, there was no clear decrease in imports from China in the last quarter of 2023 as a result of the initiation of the investigation. There was a decrease in the volume of imports in the first quarter of 2024, however, as it appeared that the volume of imports from China in the first quarter of the year were in general lower than in the last quarter of 2023 (see 2023 Q1 and 2023 Q4 as compared to 2022 Q4 and 2023 Q4 respectively), the decrease in the volume of imports for the first quarter of 2024 could have been just temporary. Also, it was recalled that during the period November 2023 and March 2024 the Houthis attacked several vessels in the Red Sea ([135]) which had an impact on the volume of imports from China into the Union. Furthermore, the volume of imports from China in the fourth quarter of 2023 was above the quarterly average of the investigation period (103 106 pieces) while the first quarter of 2024 was lower and remained significant in absolute terms.

(948) The market share of the imports from China also fluctuated on a quarterly basis. However, the market shares of the Chinese imports remained high in the two quarters post-IP, which were higher than the total market share in the investigation period stated at 25,0 % in recital (722) of this Regulation.

([135]) https://www.bbc.com/news/world-middle-east-67614911.

(949) A quarterly view of the imports into the Union from the country concerned on the basis of the number of registrations developed as follows:

Table 7b

Import volume in pieces and market share

	Investigation period				Post – IP		
	2022 Q4	2023 Q1	2023 Q2	2023 Q3	2023 Q4	2024 Q1	2024 Q2
Registrations following importation from the country concerned (pieces)	92 597	78 749	84 695	89 847	108 198	83 567	103 348
Index	*100*	*85*	*91*	*97*	*117*	*90*	*112*
Market share	22,8 %	24,5 %	22,1 %	22,0 %	25,4 %	25,1 %	27,2 %
Index	*100*	*108*	*97*	*97*	*111*	*110*	*120*

Source: EEA and S&P Global Mobility.

(950) Registrations following importation from China also fluctuated as well in terms of absolute figures and market share. In the last quarter of 2023 and the second quarter of 2024 the volume imports from China based on registration were higher than the average quarterly volume of imports in the investigation period (86 472 pieces) while registrations following importation from China were lower in the first quarter of 2024 as compared to the average quarterly volume of imports in the investigation period.

(951) The market share in the three quarters post-IP were higher than the market share in any of the quarter of the investigation period and the total market share in the investigation period (22,6 % as stated in Table 2 of this Regulation), reaching 27,2 % in the second quarter of 2024. Furthermore, when comparing the market shares in the same quarter of different years, it can be seen than the market share of the imports from China based on registration is constantly increasing (for example the market share in 2023 Q4 increased as compared to 2022 Q4 from 22,8 % to 25,4 %, the market share in 2024 Q1 increased as compared to 2023 Q1 from 24,5 % to 25,1 % and the market share in 2024 Q2 increased as compared to 2023 Q2 from 22,1 % to 27,2 %).

(952) It was therefore clear that both imports from China and registrations continued robustly, despite the initiation of this anti subsidy investigation on 4 October 2023.

(953) Import quantities in 2023 Q4 and 2024 Q1 were higher than registrations demonstrating that the stockpiling in the Union identified in recital (1017) of the provisional Regulation has increased.

(954) A quarterly view of import prices into the Union from the country concerned on the basis of Member State customs data developed as follows:

Table 8

Import prices (EUR/piece)

	Investigation period				Post – IP	
	2022 Q4	2023 Q1	2023 Q2	2023 Q3	2023 Q4	2024 Q1
China	26 345	25 869	24 770	23 887	24 144	24 150
Index	*100*	*98*	*94*	*91*	*92*	*92*

Source: Member States Customs data.

(955) The CIF price of imports from China fell by 8 % over the four quarters of the investigation period and remained at this reduced level in the post-IP period. As mentioned in the provisional Regulation, care should be exercised in examining such a trend as it could be influenced by changes in the mix of models imported.

Sales volume and market share of the Union industry

(956) A quarterly view of the Union industry's sales volume on the Union market is shown below in Table 9. This data was established on the basis of registrations as reported by EEA for the investigation period and S&P Global Mobility ([136]) for the post-IP data.

(957) On this basis the Union industry's sales volume and market share developed over the period considered as follows:

Table 9

Sales volume and market share

	Investigation period				Post – IP		
	2022 Q4	2023 Q1	2023 Q2	2023 Q3	2023 Q4	2024 Q1	2024 Q2
Sales volume on the Union market (registrations) in pieces	261 190	210 605	254 490	264 004	261 472	214 734	242 075
Index	*100*	*81*	*97*	*101*	*100*	*82*	*93*
Market share (of apparent consumption)	61,4 %	56,4 %	58,7 %	62,8 %	60,5 %	59,7 %	NA
Index	*100*	*92*	*96*	*102*	*99*	*97*	*NA*
Market share (of actual consumption – registrations)	64,2 %	65,6 %	66,5 %	64,6 %	61,3 %	64,5 %	63,8 %
Index	*100*	*102*	*101*	*97*	*94*	*105*	*99*

Source: EEA and S&P Global Mobility.

(958) In respect of apparent consumption, the market share of the Union industry declined by 2,3 percentage points in the fourth quarter of 2023 as compared to the last quarter of the investigation period (third quarter of 2023) and continued to decrease in the first quarter of 2024 reaching 59,7 %. When comparing the market shares of the Union industry based on apparent consumption in the same quarter of different years, it can be seen that in the fourth quarter of 2023 the market share of the Union industry decreased to 60,5 % from 61,4 % in the fourth quarter of 2022, then it increased in the first quarter of 2023 from 56,4 % to 59,7 % in the first quarter of 2024 The increase in the market share of the Union industry in the first quarter of 2024 as compared to the first quarter of 2023 must be seen in correlation with the temporary decrease in imports from China as explained in recital (947) of this Regulation.

([136]) Data from S&P Global Mobility is copyrighted and therefore it cannot be disclosed in detail. Nevertheless, interested parties can purchase such data.

(959) In respect of actual consumption, the market share of the Union industry fluctuated in the three quarters post-IP, first it decreased by 3,3 % percentage points in the fourth quarters of 2023 as compared to the last quarters of the investigation period (third quarter of 2023), then it increased back in the first quarter in 2024 to a similar level as in the last quarter of the investigation period and then decreased again reaching 63,8 % in the second quarter of 2024. When comparing the market shares of the Union industry based on actual consumption in the same quarter of different years, a constant decrease can be seen (for example in the fourth quarter of 2023 the market share of the Union industry decreased as compared to the fourth quarter of 2022 from 64,2 % to 61,3 %, in the first quarter of 2023 as compared to the first quarter of 2024 also decreased from 65,6 % to 64,5 % and from second quarter of 2023 to the second quarter of 2024 also decreased from 66,5 % to 63,8 %).

Unit cost of production, unit selling price and profitability of the Union industry

(960) As stated in recital (939) of this Regulation, the Commission also sent additional questions to the sampled Union producers for data for the last quarter of 2023 and the first quarter of 2024. Quarterly data for the investigation period is also shown below in order to examine this period more closely and to give context to the post investigation period data. These microeconomic indicators are presented as a weighted average of the four sampled Union producers.

Table 10

Union industry during and after the investigation period

	Investigation period				Post – IP	
	2022 Q4	2023 Q1	2023 Q2	2023 Q3	2023 Q4	2024 Q1
Average unit sales price on the Union market (EUR/piece)	33 322	33 214	34 151	33 488	32 588	30 818
Index	*100*	*100*	*102*	*100*	*98*	*92*
Unit cost of production (EUR/piece)	38 612	34 452	39 269	43 564	36 176	35 574
Index	*100*	*89*	*102*	*113*	*94*	*92*
Profitability of sales in the Union to unrelated customers (% of sales turnover)	– 11,6	– 2,5	– 9,7	– 20,5	– 13,1	– 10,8
Index	*100*	*22*	*84*	*178*	*113*	*93*

(961) The profitability of the Union industry in the last quarter of 2023 was below the average profitability of the Union industry during the investigation period, which was – 10,8 % as showed in Table 10 of the provisional Regulation. Furthermore, the profitability of the Union industry in the last quarter of 2023 and the first quarter of 2024, although showing an improvement as compared to the last quarter of 2023, was well below the profitability of the Union industry in the last quarter of 2022 and first quarter of 2023 respectively. This showed that the situation of the Union industry continued to deteriorate and was clearly threatened by the massive influx of Chinese subsidised imports, which continued to cause significant price pressure on the Union market. Moreover, it should be noted that as the Union industry is working based on orders and it takes around 6 months to deliver the BEVs to the consumer and actually register the sale in the accounting records of the Union industry, it should be noted that the profitability of the Union industry in the last quarter of 2023 was not directly the result of the price pressure exercised by the Chinese subsidised BEVs sold on the Union market in the last quarter of 2023 but before that. This significant level of losses suffered by the Union industry for such a long period of time strongly jeopardises the possibility to continue the necessary level of investment and eventually reach the adequate level of profitability required to have a sustainable business model.

(962) Following definitive disclosure, the CCCME and the GOC claimed that in Table 6, 7b and 9 the source of data for the investigation period was EEA but for post-IP the data the source was S&P Global Mobility and therefore the investigation period and post-IP quarterly data were not based on one consistent source and data set but different data sets and the Commission did not explain how the two different data reporting methodologies and sources could be juxtaposed as such.

(963) The Commission disagreed with these claims. In recital (128) of the provisional Regulation, the Commission explained that the S&P Global Mobility was a paid publication and therefore subject to copyright and as a result the Commission was not able to disclose detailed data from S&P Global Mobility. Furthermore, the data for the first and second quarters of 2024 will be made publicly available by EEA only in mid-2025 (in the same manner as the data for 2023 was made public mid-2024), after the present investigation has been completed. Furthermore, in Table 1 and 2 of this Regulation, the Commission replaced the source of data of S&P Global Mobility with EEA for the investigation period once the respective EEA data became publicly available as explained in recitals (712) and (723) of this Regulation and showed that there was no material difference between the two sources for the same data (see recitals (713) and (724) of this Regulation). Therefore, these claims were rejected.

(964) Following definitive disclosure, the CCCME and the GOC claimed that the Commission (i) should have collected post-IP data also from the exporting producers (such as sales volume, sales prices, product mix and stocks, Chinese domestic production, domestic sales, third country exports and other data in the threat of injury assessment), (ii) should have assessed the time gap between importation and registration of the Chinese BEV imports, (iii) did not give any relevance to the continued self-imports of the Union industry post-IP, (iv) did not assess the export of the Union industry post-IP, (v) did not considered the post-IP regulatory changes and impact thereof on the sales of the Union industry although these could have impacted the sales of Union-produced BEVs such as the withdrawal of government subsidies in Germany had a negative effect on the Union industry's sales, (vi) the Commission did not calculate post-IP undercutting margin although the models sold by the Union BEV producers and Chinese exporting producers are constantly evolving. Furthermore, the CCCME selected several press article about Renault, Volkswagen and BMW and highlight particular statements of these article and then claimed that the Commission's conclusion that the Union industry was negatively impacted by the Chinese BEV imports especially at the end of the IP was disconnected from the facts before it and its own intermediate findings and was based on bare assertions and not an objective examination of positive evidence as required by Articles 15.1 and 15.4 of the SCM Agreement.

(965) The purpose of the assessment of the post-IP data is not to extend the investigation period and conduct the same complex analysis as the one made for the investigation period. There is no such legal requirement. In fact, such an undertaking is practically impossible as the Commission has four months between the imposition of provisional measures and the imposition of definitive measures, out of which a large part of this time is covered by decision making procedures, including approvals from the Member States. Actually, the Commission assesses the post-IP data in a threat of injury case, whose assessment is prospective and must show that the material injury is imminent, to see whether the situation of the Union industry started to improve, or if the injury started to materialise and therefore collect the provisional measures. Thus, in this regard the Commission requested the Union industry to submit information for the post-IP data for some key indicators such as prices, costs, and profitability. Also, the Commission collected information regarding volume of imports from the Member States and purchased data for the registration of imports if it was not publicly available. There is no legal requirement for the Commission to establish post-IP price suppression, prices undercutting and a link between the subsidized low-priced imports from China and the threat of injury. Moreover, the assessment of the threat of injury does not need to be carried out again post-IP. The post-IP data is instead used to confirm the findings on threat of injury in this case.

(966) Furthermore, the Commission presented the breakdown of the imports of Chinese BEVs post-IP in Table 13 of this Regulation and concluded in recital (997) that the market share of all other Chinese imports has increased significantly by the second quarter of 2024 reaching 14,1 %. This was in line with the conclusions stated in recital (1138) of the provisional Regulation that there was likely that there would be an increase of market shares mainly from Chinese brands in the foreseeable future. Furthermore, as explained in recital (961) of this Regulation, the financial losses of the Union industry were not decreasing post-IP.

(967) As concerns the press articles highlighted by the CCCME and the GOC, the Commission noted that while CCCME selected some statements that showed increases in the BEV activity for some Union producers, it conveniently ignored the parts that indicated a less favourable financial situation for other Union producers. For example, in one article highlighted by the CCCME, although it was not clear on which market the assessment referred to, it was mentioned that the BEV sales of BMW had increased in the first half of 2024 but, at the same time, it was mentioned that BMW was the 'only brand to significantly boost battery-electric deliveries, as Mercedes-Benz and Porsche struggled with low demand' ([137]) and that 'Mercedes-Benz sold roughly half as many battery-electric cars at 93 400, a 17 % drop from a year ago'. As regards Volkswagen, the CCCME highlighted an article indicating that '[i]n the first half of the year, the Volkswagen Group was able to match the previous year's delivery level in a challenging market environment. The basis for this is our continued strong position in Western Europe'. However, at the beginning of September 2024 Volkswagen announced the possibility of closing factories in Germany 'amid rising competition from China's electric vehicle makers'. The press article also referred to a statement of Volkswagen's CEO saying that 'the European automotive industry is in a very demanding and serious situation', that 'The economic environment became even tougher, and new competitors are entering the European market', 'BYD pose[s] an increasing threat to its business in Europe' ([138]). Therefore, these claims were rejected.

(968) The CCCME and the GOC claimed that the allegation of price pressure in previous quarters by the Chinese BEV imports was a presumption and not rooted in facts because the Commission did not calculate the price undercutting or price suppression per quarter for the investigation period.

(969) The Commission did not need to calculate price undercutting per quarter in the investigation period nor to establish price suppression on a quarterly basis and the CCCME and the GOC did not explain what the legal basis for allegedly such obligation was. Therefore, the claim was rejected.

(970) The CCCME and the GOC further claimed that the Commission did not request the Union industry data for the second quarter of 2024 although it used such data for registration of imports and therefore the Commission post-IP's assessment was not objective.

(971) The Commission sent the request for post-IP data to the sampled Union producers on the day of the disclosure of the provisional findings (i.e. 4 July 2024) and asked the Union producers to submit the respective data by 22 July 2024 ([139]). The data for the second quarter of 2024 was not finalised in the accounts of the Union producers by that deadline and therefore the Commission could not have requested such data from the Union producers. In any event, six months data permitted the Commission to carry out a post-IP assessment. The Member States had the same availability constraints for data as the sampled Union producers. Furthermore, as the Commission purchased the data from S&P Global Mobility and this data was delivered on time, the Commission was able to use it. Therefore, the claim was rejected.

(972) The CCCME and the GOC further claimed that the Commission's statement in recital (953) of this Regulation that the import quantities in the fourth quarter of 2023 and the first quarter of 2024 were higher than the registrations in the same period is indicative of increased stockpiling was incorrect because the difference between the imports and registrations in that period was minimal.

(973) The Commission disagreed with this claim. The difference between the volume of imports and registration was 1 513 BEVs in the last quarter of 2023 and of 10 184 in the first quarter of 2024. These volumes should be added to the stocks at the end of the investigation period that was 66 000 BEVs as explained in recital (1017) of the provisional Regulation. This shows that the stockpiling has increased post-IP and reached 78 327 BEVs, an increase of 19 % post-IP as compared to the end of the IP. Therefore, this claim was rejected.

([137]) https://www.reuters.com/business/autos-transportation/slump-electric-car-demand-hits-mercedes-sales-q2-2024-07-10/
([138]) https://edition.cnn.com/2024/09/02/investing/volkswagen-factory-closure-germany/index.html.
([139]) t24.005473.

(974) The CCCME and the GOC also claimed that following the Commission statement in recital (961) of this Regulation that as the Union industry was working based on orders and it took around 6 months to deliver the BEVs to the consumer and actually register the sale in the accounting records of the Union industry, the profitability of the Union industry in the last quarter of 2023 was not directly the result of the price pressure exercised by the Chinese subsidised BEVs sold on the Union market in the last quarter of 2023 but before that, which in turn meant that (i) the Chinese BEV imports in the second quarter of 2023 with a 22,1 % market share would have impacted the Union industry's profitability in the third quarter of 2023 resulting in its decline to – 20,5 %, (ii) in the third quarter of 2023, the market share of the Chinese BEV imports reached 25,4 % but in the first quarter of 2024 the Union industry's losses reduced from – 20,5 % to – 13,1 % (iii) in the second quarter of 2023 the Union industry reduced its losses to – 2,5 % notwithstanding the fact that the Chinese BEV imports had a market share of 22,8 % in the first quarter of 2023. Therefore, the CCCME argued that this put into question and refuted the Commission's assumption of the correlation between the Chinese market increase and Union industry's market share decline leading to higher losses.

(975) This claim includes several factual mistakes. Concerning point (i) contrary to the CCCME and the GOC's claim, the 6-month gap referred to by the Commission in recital (961) of this Regulation, meant that the Chinese BEV imports in the second quarter of 2023 with a 22,1 % market share would have impacted the Union industry's profitability in the fourth quarter of 2023 and not third quarter of 2023, resulting in its decline of the financial loss to – 13,1 %. Furthermore, concerning point (ii), in the third quarter of 2023, the market share of the Chinese imports was not 25,4 % as the CCCME suggested, but 22,0 % and the 6-months gap meant that the Chinese market share in the third quarter of 2023 correlated with the profitability of the Union industry in the first quarter of 2024. Concerning point (iii) the losses of Union industry of 2,5 % were not registered in the second quarter of 2023 as the CCCME suggested but in the first quarter of 2023 and the market share of the Chinese imports in the first quarter of 2023 was not 22,8 % but 24,5 %. In fact, the highest losses were recorded by the Union industry in the third quarter of 2023 (20,5 %) and this is correlated with the market share of the Chinese imports in the first quarter of 2023 when the market share of the Chinese imports increased to 24,5 %. Therefore, this claim was rejected as being factually wrong.

(976) Following additional definitive disclosure, the GOC claimed that the data of the first quarter of 2024 affirmed that the Chinese BEV imports were not the explanatory force for the Union industry's situation and do not threaten injury in the future. In particular, the GOC claimed that as was the case with the data for the investigation period, the data for the first quarter of 2024 confirmed the absence of competition and correlation between Chinese BEV imports on the one hand, and the Union producers' sales and profitability as well as economic situation, on the other hand, as (i) the losses of the Union industry reduced in the first quarter of 2024 compared to the third and fourth quarters of 2023. The GOC further argued that this reduction in losses could be realized by the Union producers even though, post-IP the Chinese BEV imports' market share increased, reaching slightly above 25 %. Thus, whether or not the Commission's time-gap theory was applied, the data show that in fourth quarter of 2023, the losses of the Union industry reduced to – 13,1 % from – 20,5 % in third quarter of 2023, even though the Chinese BEV imports increased market share from 22 % in third quarter of 2023 to 25,4 % in fourth quarter of 2023. Likewise, in first quarter of 2024, the Union industry's losses reduced to – 10,8 % even though the Chinese BEV imports maintained the 25 % market share in that quarter (ii) in the first quarter of 2024, the losses of the Union industry were (a) lower than at the start of the investigation period, and (b) exactly at the same level as in the investigation period, i.e., – 10,8 %, even though the Chinese BEV imports had a higher market share in the first quarter of 2024 than at the start of the investigation period (+ 2,3 percentage points) and in the investigation period as a whole (+ 3,1 percentage points). Thus, the post-IP data considered with the investigation period data disproved the Commission's determination that the Union industry's transition from ICE vehicles to BEVs started to be impeded and its profitability deteriorated in the investigation period when 'the highest volumes of Chinese imports and highest drop of market share by the Union industry' could be observed. Moreover, the post-IP data indicated that the Union industry's losses in the third quarter of 2023 were aberrational and likely affected by specific cost-related factors at certain Union producers in the sample, but the Commission did not investigate this issue. Furthermore, as is evident, after the peak in the third quarter of 2023, the Union industry has successfully reduced losses.

(977) The Commission disagreed with these claims. Firstly, while indeed the financial losses of the Union industry decreased in the first quarter of 2024 as compared to the fourth quarter of 2023 (to – 10,8 % from – 13,1 %), as explained in recital (961) of this regulation the profitability of the Union industry in the last quarter of 2023 was below the average profitability of the Union industry during the investigation period, which was – 10,8 % as showed in Table 10 of the provisional Regulation. Furthermore, the profitability of the Union industry in the last quarter of 2023 and the first quarter of 2024, although showing an improvement as compared to the last quarter of 2023, was well below the profitability of the Union industry in the last quarter of 2022 and first quarter of 2023 respectively. To be noted that as explained in recital (945) of this Regulation, as in the case of both apparent and actual consumption, based on the quarterly data, there seemed to be a particular pattern in the data that is consistent in the respective quarters of the IP and post-IP (the profitability of the Union industry in general improves in the first quarter of the year as compared to the last quarter of the previous year).

(978) Secondly, as regards the correlation between the financial losses of the Union industry and the market share of the Chinese imports, as explained in recital (961) of this Regulation, there is a 6 months gap between the date of the order of the BEV and the delivery of the BEV, and therefore, contrary to the correlation suggested by the GOC in recital (976) of this Regulation, the financial losses of the Union industry post-IP correlated with market share of the Chinese market shares in the second and third quarters of 2023 (i.e. the financial losses of the Union industry decreased in the first quarter of 2024 as compared to the fourth quarter of 2023 to – 10,8 % from – 13,1 % when the market share of the Chinese imports decreased from 22,1 % to 22,0 % based on actual consumption from second quarter to third quarter of 2023).

(979) Thirdly, the financial losses of the Union industry in the third quarter of 2023 were not aberrational as the GOC suggested. These significant losses were correlated with the market share of the Chinese imports in the first quarter of 2023 which was very high (24,5 % based on actual consumption). Contrary to the GOC's claim, the Commission investigated and verified this data as its source is the questionnaire reply of the sampled Union producers and the Commission carried out verification visits at the sampled Union producers as explained in recital (80) of the provisional Regulation. Moreover, indeed in the fourth quarter of 2023 the financial losses of the Union industry reduced to – 13,1 % from – 20,5 % in the third quarter of 2023, as also the market share of the Chinese imports based on actual consumption decreased from 24,5 % in the first quarter of 2023 to 22,1 % in the second quarter of 2023.

(980) Furthermore, the GOC claimed that the Union industry's cost-price-profitability data in the first quarter of 2024 corroborated the points reiterated by the GOC that (i) a key factor negatively impacting the Union industry's profitability is the high production costs (notably the high variable and labour costs) and (ii) the effect of this factor on the Union industry had not been duly evaluated by the Commission in the consideration of the economic situation and causation. The GOC stated that, as was the case with the investigation period data, the post-IP data showed that the Union industry's losses correlated to and oscillated with their cost of production. In the fourth quarter of 2023, notwithstanding the changes in the market share of the Union industry, its losses reduced significantly because the production costs reduced by 17 %. Similarly, in the first quarter of 2024, the losses reduced further as the costs continued to decline.

(981) The Commission disagreed with this claim. In recital (1078) of the provisional Regulation the Commission explained that the Union industry average cost of production per piece increased by 24 % over the period considered and that this development was also affected by changes in the mix of models being produced. In addition, the unit cost was also driven by the increase in the cost of components, especially batteries due to rising costs for raw materials including cobalt, nickel and lithium. The cost of other components also increased especially those affected by the energy crisis such as steel and other metals. A factor which had a downward impact on unit costs was the increase in the volume of production and sales as shown in Table 4 and Table 5 of the provisional Regulation, as the Union producers were able to spread the fixed costs over higher quantities of BEVs. The Commission also noted that the BEV industry was a capital-intensive industry with high fixed costs and therefore a high volume of production leads to decreases in the unit cost of production. Moreover, the cost of production decreased in the fourth quarter of 2023 and the first quarter of 2024 when the market share of the Chinese import market share also decreased in the same period. Therefore, the claim was rejected.

(982) Moreover, the GOC claimed that the Union industry data post-IP also put into question the Commission's theory that the Union industry's transition and profitability only depend on the latter's ability to increase sales to reach economies of scale, reduce costs, and that this stands to be jeopardized by the Chinese BEV imports. In both the post-IP quarters, as well as in the first quarter of 2023, the improvement in the (loss-making) situation of the Union industry occurred in the context of fluctuating Union demand and sales of the Union industry.

(983) This claim is without merit. The sales of the Union industry were affected by the increase in the market share of the sales of Chinese BEVs. The demand of BEVs affected both the sales of the Union industry and the sales of Chinese BEVs. Therefore, this claim was rejected.

4.5.5. *Conclusion on the situation of the industry*

(984) Following provisional disclosure, Company 24 agreed with the Commission's assessment in recital (1037) of the provisional Regulation that the long and extensive experience in manufacturing ICE vehicles cannot be carried over to BEVs automatically.

(985) Furthermore, Company 24 claimed that the Commission's conclusion that the Union industry was in a vulnerable position was wrong (i) when looking at the positive evolution of the injury indicators, (ii) as the Commission's characterisation of the evolution of profitability of the Union industry was incorrect as the improvement of the profitability during 2020 and 2022 was significant and this happened when imports from China increased, (iii) as more sales and efficiencies were achieved, the situation of the Union industry would further improve, (iv) the provisional Regulation did not indicate that this situation would get worse, (v) considering that the Union industry was capital intensive and it was operating in a market that was at the beginning of its transition from ICE vehicles to BEVs, (vi) even in the absence of the imports from China the Union industry would not have been able to be profitable and referred in this regard to a press article that indicated that the company Ford in US was loss making while in the US there were no imports from China of BEVs, (vii) Union producers market share at the end of the investigation period was between 60 % and 65 % based on consumption and 90 % based on registration as stated in Table 5 of the provisional Regulation, (viii) according to Table 2a and 2b of the provisional Regulation the Chinese producers kept a limited market share of 3-5 %.

(986) As concerns point (i) and (ii), the Commission did not conclude that the Union industry was in a vulnerable position based on such data. In fact, in recitals (1100) to (1102) of the provisional Regulation, the Commission explained that the situation of the Union industry started to be impeded towards the end of the period considered and in particular during the investigation period, when it could be observed the highest volumes of Chinese imports and the highest drop of market share by the Union industry. Despite the improving trends in some indicators during the period considered, most financial indicators were still negative and even started to deteriorate during the investigation period, including profitability, return on investment, and cash-flow, while the market shares consistently decreased throughout the period considered, achieving the lowest point at the end of the investigation period. As concerns point (iii), the situation of the Union industry started to deteriorate already in the investigation period. As concerns point (iv), the analysis in Section 5 demonstrated that the situation of the Union industry will get worst as the subsidised imports from China at undercutting prices will increase in the foreseeable future. As concerns point (v), as the Union industry is indeed capital intensive, it is essential that the Union industry is able to maintain sufficient sales volumes and market shares in order to reach economies of scale to recover its cost and generate enough profitability for necessary investments. As concerns point (vi), even if the Union industry would not have become profitable in the investigation period in the absence of the subsidized imports from China at undercutting prices, the profitability of the Union industry would have not deteriorated in the investigation period as it did. Finally, the points (vii) and (viii) are factually wrong. Contrary to Company 24's claim, in Table 5 of the provisional Regulation, the market share of the Union industry based on apparent consumption decreased from 68,9 % to 59,9 % during the period considered and based on actual consumption (registrations) from 70,4 % to 65,0 % during the same period. Furthermore, according to Table 2a and 2b of the provisional Regulation, the market share of the Chinese exporting producers increased from 3,9 % to 25,0 % and from 3,5 % to 22,8 % respectively during the period considered. Therefore, the claims were rejected.

(987) Following definitive disclosure, the CAAM claimed that from a statistical perspective, the data volume (imports, sales volume, market shares) was insufficient, and the trends were not pronounced. As such, claims of injury, the threat of injury, and causation do not hold up. The CAAM further argued that the Union was undergoing a transitional phase, with diverging views among its Member States on the pace of this transition. As a result, transition efforts have been erratic and volatile, leading to an unstable and incomplete supply. Imports have thus served as a temporary supplement. Such supplementary imports are unlikely to demonstrate sustained growth.

(988) This claim was very generic and unsubstantiated. Furthermore, the Commission addressed the volume of imports from China and their market share in Table 2a and 2b of the provisional Regulation as well as in Tables 7a and 7b of this Regulation, sale of the Union industry and its market share in Table 5 of the provisional Regulation, as well as Table 9 of this Regulation, and imports from all other third countries in Table 17 of the provisional Regulation and Table 17a and 17b of this Regulation. The trend of this data was assessed over the period considered. These trends were found rather clear as explained in recitals (1012) to (1017), (1063) to (1064), (1178) to (1181) of the provisional Regulation, and recitals (947) to (953), (958) to (959), (1179) to (1199) of this Regulation. Therefore, the claim was rejected.

(989) The Commission definitively concluded that the Union industry was negatively affected by imports from the PRC, especially at the end of the investigation period, as concluded in Section 4.5.4 of the provisional Regulation.

(990) The Commission therefore proceeded with the analysis of a threat of material injury in accordance with Article 8(8) of the basic Regulation.

5. **THREAT OF INJURY**

5.1. **Introduction**

(991) As explained in recital (939) of this Regulation, the Commission continued its prospective analysis after the imposition of the provisional measures, by collecting data for the fourth quarter of 2023 and the first quarter of 2024, notably relating to the profitability of the Union producers, the sales prices and cost of production of the sampled Union producers as compared against the imports from the PRC. The Commission then analysed whether these additional data would confirm or invalidate the findings based on the data from the investigation period.

(992) In Section 5.3, the Commission addresses all comments received after the imposition of provisional countervailing measures that were still pertinent after the reviews and additional analysis conducted during the definitive stage.

5.2. **Definitive assessment**

5.2.1. *Update of post-IP data of Chinese imports*

(993) As in the case of apparent consumption, imports from China following registration and their market share as explained in recitals (710) and (722) of this Regulation, in order for the Commission to be able to disclose the underlying data behind the respective calculations, the Commission revised the data for the breakdown of market share of Chinese imports as reported in Tables 12a and 12b of the provisional Regulation (in total and quarterly) using as source EEA instead of S&P Global Mobility.

Table 11

Breakdown of market share of Chinese imports

	Investigation period
Market share of imports from Chinese exporting producers related to the Union ICE OEMs transitioning to production of BEVs	5,5 %
Tesla	9,8 %

	Investigation period
Market share of all other Chinese imports	7,3 %

Source: EEA.

(994) Chinese imports on a quarterly basis during the investigation period based on EEA evolved as shown in the below table.

Table 12

Breakdown of market share of Chinese imports on a quarterly basis

	2022 Q4	2023 Q1	2023 Q2	2023 Q3
Market share of imports from Chinese exporting producers related to the Union ICE OEMs transitioning to production of BEVs	5,5 %	5,5 %	4,7 %	6,3 %
Tesla	10,9 %	12,5 %	9,1 %	7,0 %
Market share of all other Chinese imports	6,8 %	5,7 %	7,9 %	8,5 %

Source: EEA.

(995) As in the case of apparent consumption, imports from China following registration and their market share, there was a minor difference for the data of the breakdown of imports from China using as source S&P Global Mobility (see Table 12b of the provisional Regulation) and EEA.

(996) The Commission also analysed the breakdown of the imports from China based on registration for the three quarters post-IP, as shown in Table 13 below.

Table 13

Breakdown of market share of Chinese imports on a quarterly basis post – IP

	2023 Q4	2024 Q1	2024 Q2
Market share of imports from Chinese exporting producers related to the Union ICE OEMs transitioning to production of BEVs	6,2 %	[3,9 % –5,1 %] (*)	[2,9 % –4,2 %]
Tesla	10,6 %	[8,7 % –10,0 %]	[8,0 % –9,5 %]
Market share of all other Chinese imports	8,6 %	10,4 %	14,1 %

Source: EEA and S&P Global Mobility.

(*) The data for 2024 Q1 and Q2 is not publicly available, therefore, in order to protect the confidentiality of the data for Tesla, the Commission had to report the respective data for Tesla and for the imports from Chinese exporting producers related to the Union ICE OEMs transitioning to production of BEVs also in ranges, as otherwise Tesla data could be calculated by deduction.

(997) Table 13 above shows that the market share of all other Chinese imports has increased significantly in the second quarter of 2024 reaching 14,1 %. This was due to imports from the Geely Group of the brands Volvo and Polestar, as well as to an increase in market share of BYD and SAIC.

(998) Table 13 above also shows that post-IP, the market share of imports from Chinese exporting producers related to the Union ICE OEMs transitioning to production of BEVs and Tesla decreased while the market share of imports from all other Chinese exporting producers increased significantly. This confirms the Commission's conclusion in recital (1138) of the provisional Regulation that the increase of market shares of Chinese imports will mainly come from Chinese brands in the foreseeable future.

(999) Following definitive disclosure, the CCCME and the GOC claimed that as the Commission included in the Union BEV industry, regardless of the brands or OEMs, the companies producing BEVs in the Union, Volvo's Union BEV production and entity/ies were also included in the Union BEV production and producers and therefore Volvo imports should have been included in the Union BEV producers' imports. Furthermore, the imports of Chinese origin BEVs of Japanese brands operating in the Union in the investigation period and afterwards, cannot be included as imports from Chinese brand BEVs as the Commission has done.

(1000) The Commission disagreed with this claim. As with the former European brand MG (currently owned by the Chinese group SAIC), Polestar and the brand Volvo are owned by the Chinese Geely Group. The European brands that are manufactured in China and were not considered as Chinese brands such as Dacia Spring, BMW X2, Mini, Cupra are owned by Renault, BMW and Volkswagen respectively, while the brand Smart is 50 %/50 % owned by Mercedes Benz and Geely. As concerns the Chinese origin BEVs of Japanese brands (although the CCCME and the GOC did not specify which brands were those), contrary to the CCCME and the GOC's claim, these imports were not considered as Chinese brand BEVs.

(1001) The CCCME and the GOC further claimed that the allegation that Chinese BEV imports increased market share post-IP and notably in the second quarter of 2024 was unobjective as it was temporary and should be seen in the context of the then impending imposition of countervailing measures as highlighted by the European Commission's European Alternative Fuels Observatory which stated that: 'the BEV market in June was marked by several influential factors. Notably, the market responded to the upcoming changes in import tariffs for Made-in-China (MiC) BEVs, leading to a brief surge in sales. Models like the MG4 and Volvo EX30 saw record-breaking registration numbers as consumers acted swiftly to secure vehicles before the tariff increase' ([140]).

(1002) The fact that the market share of the Chinese BEVs imports increased in the second quarter of 2024 is not an allegation, but a fact. Furthermore, the reasons highlighted by the European Alternative Fuels Observatory for the increase in the market share of Chinese BEVs actually showed that the market share of the Chinese BEVs will continue to increase without the imposition of countervailing duties. Therefore, this claim was rejected.

(1003) The CCCME and the GOC also claimed that the Commission's statement that self-imports by the EU OEM producers declined post-IP was not based on an objective assessment in the fourth quarter of 2023 as the market share of their self-imports increased and was 6,2 % which was as high as in the third quarter of 2024 and was in fact higher than the average 5,5 % market share of the self-imports of these Union producers in the investigation period.

(1004) Apart from the fact that this claim included a clerical error, it was also partially factually incorrect and on substance without merit. First of all, the Commission believed that the CCCME had referred in its claim to the market share in the third quarter of 2023 and not 2024, as the third quarter of 2024 was not covered by the investigation. Furthermore, the market share of the BEVs imported from China of the EU OEMs was not 6,2 % in the third quarter of 2023, but actually 6,3 % (see Table 12 of this Regulation). That being said, the market share of the BEVs imports from China of the EU OEMs was indeed 6,2 % in the fourth quarter of 2023, which was higher than the average market share of the investigation period of 5,5 %. However, the CCCME ignored in its claim the fact that in the first and the second quarters of 2024, the market share of the imports of Chinese BEVs of the EU OEMs consistently decreased below the market share of the investigation period. Therefore, the claim was rejected.

([140]) European Commission European Alternative Fuels Observatory, 'Europe EV Sales Analysis: Key In-sights on June 2024 Registrations', 14 August 2024, available at https://alternative-fuels-observatory.ec.europa.eu/general-information/news/europe-ev-sales-analysis-key-insights-june-2024-registrations#:~:text=In%20June%202024%2C%20the%20European,modest%20growth%20of%204%25%20YoY.

(1005) The CCCME and the GOC also stated that the Commission in considering the slight decline in market share of the self-imports by the Union OEM producers in the first quarter of 2024 and the second quarter of 2024 (compared to the average of 5,5 % during the investigation), the Commission did not take into account that this decline in market shares was 'perhaps temporary' and listed several reasons in this regard.

(1006) The Commission noted the contradiction between the CCCME and the GOC's claim in recital (1003) of this Regulation where the CCCME and the GOC accused the Commission for not being objective in its assessment that the market share of Chinese BEVs of the Union OEMs decreased post-IP, and the CCCME and the GOC's acknowledgement in its claim in recital (1005) of this Regulation that the market share of Chinese BEVs of the Union OEMs actually decreased post-IP. Furthermore, the Commission noted that even CCCME was not sure of what it claimed as it stated that the decrease in market share was 'perhaps temporary'. It thus showed that the CCCME was aware that it was speculating that the decrease in market share was temporary. Therefore, the claim was rejected.

(1007) The CCCME and the GOC also claimed that as regards Tesla, its market share of self-imports in fourth quarter of 2023, first and second quarters of 2024 were in the same range as the average market share of its self-imports in the investigation period and did not demonstrate an effective decline. Furthermore, the CCCME claimed that Tesla's imports were higher in the past and could well increase considering that its self-imports will be subject to a lower duty rate of 9 %.

(1008) As showed in Table 11 of this Regulation, the market share of the Chinese imports made by Tesla in the investigation period was 9,8 %; however, the market shares in the first and second quarter of 2024 were below the average market share in the investigation period. As stated in Table 13 of this Regulation, the Commission could not disclose the exact market shares of the imports of Tesla from China as this information was copyrighted. Furthermore, it was irrelevant that the imports from China of Tesla could increase in the future as its individual duty rate was lower than of the other Chinese exporters as the assessment for the future increase in market share must be made in the absence of duties. Therefore, these claims were rejected.

(1009) Finally, the CCCME and the GOC claimed that the Commission did not respond to the evidence provided in the comments on the provisional Regulation that, apart from MG, no other Chinese BEV actually competed with the Union BEV producers and Union producers dominated the Union BEV market. In support of this claimed the CCCME referred to the June 2024 BEV market data published by the Commission's European Alternative Fuels Observatory which allegedly confirmed that: (i) the Union producers did not lose market share and, (ii) MG was the only Chinese BEV that competed with the Union producers ([141]). Furthermore, the CCCME claimed that same conclusions were confirmed by PwC – Strategy & Q2 2024 report ([142]).

(1010) This claim is without merit as the supporting evidence used to substantiate the claim is not relevant. It follows that the Commission noted that the market data published by the Commission's European Alternative Fuels Observatory did not address the competition between Union made BEVs and Chinese BEVs nor the evolution of the market share of the Union BEVs producers vs the market share of the Chinese BEVs. Furthermore, it was not clear why the CCCME claimed that 'PwC – Strategy & Q2 2024' report draw such conclusion on page 6 as stated in recital (1009) of this Regulation. Indeed, page 6 of this report shows the 'Top-selling BEVs in H1 2024 (ranking change H1 2024 vs. Q1 2024)' in Europe, China and the USA. Therefore, this claim was rejected.

([141]) European Commission European Alternative Fuels Observatory, 'Europe EV Sales Analysis: Key In-sights on June 2024 Registrations', 14 August 2024, available at https://alternative-fuels-observatory.ec.europa.eu/general-information/news/europe-ev-sales-analysis-key-insights-june-2024-registrations#:~:text=In%20June%202024%2C%20the%20European,modest%20growth%20of%204%25%20YoY.

([142]) PwC – Strategy &, 'Electric Vehicles Sales Review Q2 2024' July 2024, available at https://www.strategyand.pwc.com/de/en/industries/automotive/electric-vehicle-sales-review-2024-q2.html, p. 6.

5.2.2. *Other elements: profitability and other economic indicators*

(1011) As explained in recitals (1088), (1101) and (1102) of the provisional Regulation, the profitability of the Union industry started to deteriorate in the investigation period when the imports from China were the highest.

(1012) The additional information collected for the post-IP data established that the profitability of the Union industry continued to deteriorate as explained in recital (961) while the market share continued to decrease as well as showed in recital (959), while the market share of the Chinese brands continued to increase post-IP reaching 14,1 % in the second quarter of 2024 as shown in Table 13 of this Regulation.

5.3. **Interested parties' comments after provisional measures**

(1013) Comments on threat of injury were received from the CCCME, the GOC, the Geely Group, NIO, Company 18 and VDA.

5.3.1. *The nature of the subsidy or subsidies in question and the trade effects likely to arise therefrom*

(1014) Following provisional disclosure, the CCCME and the GOC claimed that the Commission's statement that the Chinese BEV imports benefited from subsidies was based on WTO-inconsistent determination and therefore that assessment vitiated any findings of the trade effects likely to arise from the alleged subsidization.

(1015) The Commission noted that the CCCME did not elaborate on its claim that the subsidisation findings made by the Commission in the provisional Regulation were WTO-inconsistent. The comments submitted by the GOC concerning the determination of subsidisation were addressed in Section 3 above. Therefore, this claim was rejected as being unsubstantiated.

(1016) The CCCME and the GOC also reiterated some of their comments made regarding undercutting and price suppression that are summarised and addressed in detail in recitals (765) to (811) of this Regulation. The CCCME and the GOC did not bring any new evidence in this regard and therefore, these claims were rejected.

(1017) Therefore, the conclusions set out in recitals (1106) to (1110) of the provisional Regulation were confirmed.

5.3.2. *Significant rate of increase of subsidised imports into the Union market indicating the likelihood of substantially increased imports*

(1018) Following provisional disclosure, the CCCME and the GOC claimed that the Commission's threat of injury assessment was based on inconsistent data and lacked parallelism in that on the one hand, for the assessment of the volume and price effects of the Chinese BEV imports, all the Chinese BEV imports were considered, but on the other hand, the threat of injury assessment was based only on the Chinese owned BEV imports/Chinese brand BEV imports as confirmed in recitals (1125) to (1128), (1157) to (1159) and (1213) of the provisional Regulation. This claim was also reiterated after definitive disclosure.

(1019) This claim is without merit. In recital (1131) of the provisional Regulation, in response to a similar claim made by the CCCME and the GOC as set out in recital (1130) of the provisional Regulation, the Commission stated that all subsidized imports of BEV originating in China were subject to the current investigation, regardless of the ownership of a specific company. Just because in certain recitals of the provisional Regulation the Commission explained different aspects of Chinese owned BEV imports or Chinese brand BEV imports, this does not mean that the threat of injury assessment was based only on the Chinese owned BEV imports or Chinese brand BEV imports. The Commission looked into imports concerning Chinese brands to further confirm its findings about a likely increase of subsidised imports into the Union market, in view of the nature of the subsidisation at issue. In other recitals of the provisional Regulation such as (1136) and (1137) the Commission explained elements of the future imports of BEVs by the Union industry. Therefore, the claim was rejected.

(1020) Following definitive disclosure, the CCCME and the GOC claimed that the indisputable fact remained that the Chinese exporting producers' sample consisted only of Chinese brand BEV producers, implying that the price effects' analysis was made only on the basis of the Chinese brand BEV imports.

(1021) This claim is factually wrong. Geely, one of the sampled exporting producers, also exported during the investigation period the brand Smart, which is not a Chinese brand. As explained in recital (793) of this Regulation for the price effects' analysis the Commission carried out two different analyses, i.e. (i) the price undercutting based on the import of BEVs from the three sampled Chinese exporting producers during the investigation period, and (ii) price suppression for the entire period considered which included all imports of Chinese BEVs. Therefore, the claim was rejected.

(1022) Following provisional disclosure, the CCCME and the GOC also claimed that the Chinese brand BEV import volume only effectively increased between 2022 and the investigation period and the increase in imports in one year of the period considered is neither sufficient nor a representative basis to draw conclusions about the future substantial increase in imports as done by the Commission for the threat of injury assessment.

(1023) This claim is also without merit. The Commission did not conclude in the provisional Regulation that the imports from China would increase based on the fact that the volume of Chinese brands increased between 2020 and the investigation period. In fact, the Commission concluded that the imports from China would increase after assessing several measures indicating likelihood of further substantial increase in imports in recitals (1113) to (1118) of the provisional Regulation, the attractiveness of the Union industry in recitals (1119) to (1129) of the provisional Regulation, the likely evolution of market shares of Chinese imports on the Union market in recitals (1130) to (1137) of the provisional Regulation. Furthermore, the Commission concluded in recital (1138) of the provisional Regulation that it was likely that there would be an increase of market shares mainly from Chinese brands in the foreseeable future by assessing the high number of announcements made by the Chinese exporting producers for launching new BEVs models on the Union market as explained in recitals (1126) and (1127) of the provisional Regulation, while the Union ICE OEMs transitioning to production of BEVs did not announce any major plans to import BEVs from China and most of them had one BEV model or brand that was imported from China in significant lower volumes as compared to their production in the Union. Moreover, the stocks in the Union of Chinese BEVs as established in recitals (1157) to (1159) of the provisional Regulation are a relevant indicator for future pressure exercised by the Chinese BEVs on the Union industry as these quantities are clearly mainly intended for sale on the Union market. Therefore, the claim was rejected.

Rate of increase of imports from China and their market share

(1024) Following provisional disclosure, the CCCME and the GOC claimed that the Commission wrongly assessed the rate of increase in imports based on the Member States's custom data and not on registrations which shows a smaller increase in the volume of imports. This claim was also reiterated after definitive disclosure.

(1025) The CCCME and the GOC did not explain why the rate of increase of imports should be assessed based on registration and not on actual imports. To recall, the registrations cover only the imports of BEVs that were sold and registered, the imports that were not sold are not covered by the data referring to registration. Furthermore, the legal test, as set out in Article 8(8)(b) of the basic Regulation, is the 'rate of increase of imports' and not of imports that were resold on the Union market. Nevertheless, the total imports of BEVs from China that were registered also increased in the period considered as explained in Table 2b of the provisional Regulation, both in terms of volume and in terms of market shares. The increases in volume terms and market share of total imports and total imports that were registered as explained in Tables 2a and 2b of the provisional Regulation were similar. Therefore, the claim was rejected.

(1026) Following provisional disclosure, the CCCME and the GOC also claimed that the Commission did not analyse the volume and market share increases of the Chinese brand BEV imports separately and that the Commission conflated the self-imports and Chinese brand BEV imports throughout the volume and price effects' analyses to

make a case of increased import volumes and market share of the Chinese BEV imports as (i) the Chinese brand BEV imports remained substantially below the Union industry's self-imports throughout the period considered, (ii) the absolute market share and the rate of increase in the market share of the Chinese brand BEV imports was significantly lower than that of the self-imports by the Union BEV producers and (iii) the total third country imports have been consistently higher than the Chinese brand BEV imports into the Union over the period considered and held twice the market share of the Chinese brand BEV imports in the investigation period. VDA also claimed that the Commission should look at the imports from China at the individual manufacturer level.

(1027) The above claim of the CCCME and the GOC was in contradiction to their claim made prior to the imposition of provisional measures, i.e. that in order to assess the Chinese BEV import volume and the likelihood of such imports to increase in the future, all BEVs imports from China and particularly the self-imports by the Union BEV industry should be assessed, as set out in recital (1130) of the provisional Regulation. As it was explained in recital (1131) of the provisional Regulation, all subsidized imports of BEVs originating in China were subject to the current investigation, regardless of the ownership of a specific company. Therefore, whether the imports of the Chinese brand BEVs or their market share were below the Union industry's self-imports or increased only between 2022 and the investigation period is irrelevant. Furthermore, it was not clear to what extend third country imports should be considered in the determination of the impact of the imports from China for the threat of injury assessment. Therefore, in the injury and the threat of injury sections, the Commission assessed all imports of BEVs from China. The alleged impact of imports from other third countries was, however, analysed in recital (1191) of this Regulation where the Commission concluded that the market share of these imports showed a decreasing trend between 2020 and the investigation period, while average import prices showed an increasing trend throughout the period considered. In addition, the prices of imports from other third countries were significantly above the average import price of Chinese imports during the IP. On this basis they do not seem to contribute to the threat of injury to the Union industry. This conclusion was also confirmed by the post-IP data as explained in recitals (1178) to (1186) of this Regulation. Furthermore, in recital (1138) of the provisional Regulation, the Commission concluded that it was likely that there would be an increase of market shares mainly from Chinese brands in the foreseeable future in reply to a claimed raised by the CCCME and the GOC as explained in recital (1130) of the provisional Regulation and this conclusion was reached based on the assessment made in recitals (1136) and (1137) of the provisional Regulation. Therefore, these claims were rejected.

(1028) Following definitive disclosure, the CCCME and the GOC claimed that the Commission simply concluded that the market share of the Chinese brand BEVs would increase in the foreseeable future and thus all Chinese BEV imports would increase, but the Commission disregarded its own finding of the decline in Union industry self-imports and their market share post-IP.

(1029) This claim is also factually wrong. In recital (1138) of the provisional Regulation, the Commission concluded that it was likely that there would be an increase of market shares mainly from Chinese brands in the foreseeable future. Contrary to the CCCME and the GOC's claim, the Commission did not conclude that all Chinese BEV imports would increase in the foreseeable future. Therefore, the claim was rejected.

(1030) Therefore, the conclusions set out in recitals (1111) to (1112) of the provisional Regulation were confirmed.

Measures indicating likelihood of further substantial increase in imports

(1031) Following provisional disclosure, the CCCME and the GOC claimed that the Commission's assessment of the likely increase in Chinese BEV exports to the Union due to the supposed GOC policies was not based on positive evidence. In particular, the CCCME and GOC claimed that the reference to China's manufacturing prowess cannot be understood as exports, and there was no evidence/mention of increased exports to the Union or any targeting of the Union market in any of the documents relied upon by the Commission. Furthermore, the CCCME and the GOC argued that the Commission attached significant importance to statements by China (i.e. President of China) but overlooked statements by the Union industry producers that they were growing and faced no threat of injury from Chinese BEV imports and were themselves establishing/expanding production in China. This claim was also reiterated after definitive disclosure.

(1032) First of all, in recital (1113) of the provisional Regulation, the Commission stated that there was evidence that the GOC's policies targeted production and specifically exports of BEVs. Recital (1115) of the provisional Regulation sets out the Commission's finding that the NEVs (BEVs and PHEVs) were very important for the Chinese economy and that in his 2024 New Year message, the President of China stated that the NEVs are 'a new testimony of China's manufacturing prowess'. Therefore, the reference to China's manufacturing prowess referred to production and not exports. In the same recital (1115) of the provisional Regulation, the Commission sets out its findings that the Chinese BEVs manufacturers were not merely restricted to their domestic market as the GOC was encouraging Chinese BEV producers to explore markets overseas and supported them in many ways in order to expand their export sales, including by developing sound legal consulting, testing, and certification systems. In this regard, the Commission referred to the Plan 2021–2035 which sets five strategic tasks for China's NEV industry for the next 15 years, and the plan of the Chinese city of Shenzhen to boost car exports as explained in detail in recital (1116) of the provisional Regulation. Moreover, as explained in recital (428) of the provisional Regulation, the Articles of Association of EXIM bank state that EXIM bank is dedicated to supporting the development of foreign trade and economic cooperation, cross-border investment, the One Belt One Road Initiative, cooperation in international capacity and equipment manufacturing. Its scope of business includes short-term, medium-term and long-term loans as approved and in line with the State's foreign trade and 'going out' policies, such as export credit, import credit, foreign contracted engineering loans, overseas investment loans, Chinese government foreign aid loans and export buyer loans. Furthermore, out of all export markets available for the Chinese exporters, in recitals (1119) to (1129) of the provisional Regulation, the Commission explained in detail its assessment why the Union market was the most attractive export market for the Chinese exporting producers.

(1033) As concerns the statements made by the Union producers in the press mentioned by the CCCME and the GOC, such statements were made by companies exposed to retaliation from China and it was considered that they do not equal in relevance with the statements made by the President of China referring to the industrial policy of China as concerns BEVs. Therefore, these claims were rejected.

(1034) Following provisional disclosure, the CCCME and the GOC also claimed that the expanding production of BEVs in China was no evidence of increased exports to the Union.

(1035) The Commission did not draw such a conclusion in the provisional Regulation. The fact that the production in China and the exports to the Union increased was based on facts as showed in Tables 14 and 16 of the provisional Regulation. Therefore, the claim was rejected.

(1036) Following provisional disclosure, the CCCME and the GOC also claimed that a large part of the production increase in China was due to the Union BEV producers producing in China. The CCCME and the GOC reiterated this claim after definitive disclosure further claiming that the Commission could not expect interested parties to provide the Union producers' production data in China when in fact, the Commission was supposedly acting to protect the Union BEV producers.

(1037) The Commission noted that the CCCME and the GOC did not submit any concrete data about the volume of production of BEVs of the Union producers in relation to the production of the other Chinese producers. Furthermore, the CCCME, GOC or any other interested parties could not raise all kind of speculative claims and expect the Commission to collect the information in this regard. The CCCME or any other interested party have the legal obligation to submit supporting evidence for the claims they make. Furthermore, there is no obligation on the part of the Commission to carry out on its own initiative further investigations based on speculative and not detailed claims by interested parties, even more so when the Commission already has sufficiently reliable data, as it is the case with regard to measures indicating likelihood of further substantial increase in imports. Therefore, this claim was rejected as being unsubstantiated.

(1038) Following provisional disclosure, the CCCME and the GOC also claimed that the Commission's assessment of Chinese exports was incorrect and that they would be 42 % lower than the data provided by the Commission in Table 16 of the provisional Regulation.

(1039) As explained in recital (738) of this Regulation, the data in Table 16 of the provisional Regulation, related to exports of BEVs from China, were based on the GTA database using the product code 8703 80. The CCCME did not specify which product code it used to extract the Chinese BEV export data. Therefore, the claim was rejected as being unsubstantiated.

(1040) Following provisional disclosure the CCCME and the GOC also claimed that the ships for transporting cars from China of BYD and Chery mentioned by the Commission in recital (1117) of the provisional Regulation said nothing about potential exports to the Union as (i) it was not the first industry which was buying ships to reduce costs and ease transportation bottlenecks, (ii) both BYD and Chery were establishing production in the Union and (iii) these ships might not be used to export BEVs from China to the Union but from the Union to the rest of the world. This claim was also reiterated after definitive disclosure.

(1041) In recital (1117) of the provisional Regulation, the Commission did not refer only to ships of BYD and Chery but also of other Chinese companies. In fact, the Commission stated that the Chinese shipyards may deliver upwards of 200 ships between 2023 and 2026 and that amounted to twice the number of ships delivered from 2015 to 2022. The fact that these companies were ordering such large number of ships clearly showed their intention to export. Furthermore, the fact that BYD and Chery might establish production in the Union did not mean that certain BEVs models would not continue to be exported from China and the CCCME had not submitted any evidence showing potential export destinations in this regard. Furthermore the Commission referred to its findings of the attractiveness of the Union market in recitals (1119) to (1129) of the provisional Regulation and recitals (1045) to (1060) of this Regulation. Therefore, these claims were rejected.

(1042) Following provisional disclosure, the CCCME and the GOC also claimed that the Commission acknowledged that certain Chinese producers have plans to set up production in the Union and, contrary to the Commission's assessment, this was not an indicator of increased exports but of decreased exports to the Union.

(1043) The plans of expansion of Chinese producers in major Union countries are described in recitals (1126) and (1127) of the provisional Regulation, enumerating announcements of certain Chinese exporting producers to launch several new models of BEVs on the Union market, as well as to expand their presence on the Union market by entering the market of more Member States in the short term with BEVs from China. This was to show the attractiveness of the Union market for the Chinese producers but cannot deviate from the findings of massive overcapacity of BEVs in China, the high overcapacities of the Chinese exporting producers and the fact of a high increase of Chinese BEVs imports during the investigation period confirmed by data collected refereeing to post-IP developments as set out in Section 5.2 of this Regulation. Therefore, the claim was rejected.

(1044) Therefore, the conclusions set out in recitals (1113) to (1118) of the provisional Regulation were confirmed.

Attractiveness and targeting the Union market

(1045) The Commission noted that in addition to the countries mentioned in recital (1121) of the provisional Regulation, Canada will impose 100 % tariff on imports of BEVs from China as of 1 October 2024 ([143]).

(1046) Following provisional disclosure, the CCCME and the GOC claimed that the Commission should have looked at the increase in the BEVs market in other third countries and not only at the size of these markets during the period considered. In this regard, the CCCME and the GOC stated that BEVs are eventually the future everywhere in the world not only in the Union. In this regard, the CCCME and the GOC noted in particular that the BEVs market in the UK, Australia, Canada and Japan were increasing in the future. The CCCME and the GOC also argued that the Commission did not look at the BEVs market in Africa, the Middle East and other emerging economies. This claim was reiterated following definitive disclosure.

([143]) https://www.reuters.com/business/autos-transportation/trudeau-says-canada-impose-100-tariff-chinese-evs-2024-08-26/#:~:text=OTTAWA%2C%20Aug%2026%20(Reuters),steel%20and%20aluminum%20from%20China.

(1047) The Commission agreed that BEVs are eventually the future in many places of the world, not only in the Union, along with other technologies. In Table 11 of the provisional Regulation the Commission presented the largest BEVs market in the world and the proportion of the BEVs in the total passenger cars market. Based on this data, the size of the total passenger cars market can be calculated. The Commission disagreed that the growth of a given market was more important than the size of that same market and the proportion of the BEVs in the total passenger cars market. For example, if the size of the passenger cars market is 10 000 vehicles and the BEVs market is growing 15 % per year, it does not translate into a big demand of BEVs when the total passenger market is small. The size of the total passenger cars market, the size of the BEV market and the proportion of the BEVs in the total passenger cars market show the future potential of the BEV market once ICE cars will be replaced with BEVs and the state of the transition of the passenger cars market. Furthermore, no information was available to the Commission concerning the increase in BEVs market in the other third countries and no such information was provided by the CCCME or the GOC. The Commission also noted that the CCCME provided only some anecdotal information regarding the increase of EV market in the UK, Australia, Canada and Japan, that could not be considered as valid evidence on which basis the findings of the Commission could be devaluated. Therefore, the claims were rejected.

(1048) Following provisional disclosure, the CCCME and the GOC claimed that as regard market access, the Commission looked at the US and Türkiye markets which were not key markets for the Chinese BEVs in the past, while it ignored other growing key markets for Chinese BEVs around Asia such as Thailand and the Philippines as well as the UK, the UAE, Africa and Latin America where the import tariffs are low. Furthermore, the CCCME claimed that, as regard India, the Commission overlooked the fact that India introduced a new policy reducing the import tariff to 15 % for companies that set up production in India in the near term and that SAIC had set up a joint venture in India which shows that the Indian market is not closed for the Chinese BEV exports.

(1049) The fact that some markets were not key export markets for Chinese BEVs in the past it did not mean that they cannot become so in the future. Furthermore, while some of the markets around Asia as well as UK, the UAE, Africa and Latin America do not have high import duties for imports of BEVs from China, these markets are small as compared to the Union and the US market as shown in Table 11 of the provisional Regulation. The CCCME and the GOC did not submit any evidence showing that the BEVs market in UAE and Africa were more attractive than the Union market for the Chinese exporters and no information was available in the investigation file that would confirm such statement; to the contrary the investigation has shown that the Union market was the most attractive for Chinese exporting producers. Also, the fact the tariffs in India do not apply to SAIC was considered insufficient in this regard, as such tariffs may still apply to other Chinese exporting producers. Therefore, the claim was rejected.

(1050) Following provisional disclosure, the CCCME and the GOC also claimed that the export volumes of Union BEV producers and their markets when compared to those of the Chinese BEV producers did not show that the Chinese brand BEVs were targeting the Union market. The CCCME further claimed that the Union industry was not exporting BEVs to China as it had manufacturing plants in China. Furthermore, the CCCME claimed that also the Union producers were impacted by tariffs in India, but that all these did not mean that the Union industry did not export to other third countries.

(1051) The Commission failed to understand the relevance of this claim. The fact that the Union producers are exporting to other countries or that Union BEV producers are importing some models from China does not put into question the Commission's findings as regards the attractiveness of the Union market. Therefore, it was rejected as being unclear.

(1052) Following provisional disclosure, the CCCME and the GOC also claimed that the Commission's comparison of the Chinese BEV prices for certain models on the Chinese and Union market was irrelevant for projections of increased imports as no two markets were the same. Furthermore, the CCCME and the GOC stated that the Commission's assessment (i) was based on selective post-IP examples, (ii) did not take into account the lower transport and sales costs in China among others, and (iii) the competition on the Chinese market that was essential to the growth of any industry.

(1053) The fact that some of the examples regarding prices were from periods after the investigation period is irrelevant as the threat of injury analysis is a prospective analysis. Furthermore, the fact that the transport costs, sales costs are lower in China or that there is high competition on the Chinese market does not invalidate the finding that the Chinese exporting producers were more profitable on the Union market than on their domestic market. Therefore, the claim was rejected.

(1054) Following provisional disclosure, the CCCME and the GOC also claimed that the Chinese market was growing, and the Union market was very small in comparison to the Chinese market.

(1055) In recitals (1145) to (1148) of the provisional Regulation the Commission analysed the growth of the Chinese market and concluded that the total spare capacity in China exceeds significantly the demand in China. Furthermore, it is unclear how the fact that the Union market was smaller than the Chinese market makes the Union market less attractive for the Chinese exporting producers. Therefore, these claims were rejected.

(1056) Furthermore, following provisional disclosure, the CCCME and the GOC claimed that the Commission failed to consider that BEVs cannot be forced upon Union customers, can only be sold on the Union market if the customers buy them and therefore, it was the demand and willingness of the Union customers to buy Chinese BEVs and not the supposed lower prices that determines the consumer to buy the Chinese BEVs.

(1057) This claim is without merit. The price is one of the key factors for the consumer in deciding to purchase the BEVs.

(1058) Following provisional disclosure, the CCCME and the GOC also claimed that the mere fact that Chinese companies are present on the Union market was not sufficient evidence to conclude that exports would increase in the future. The CCCME further stated that the announcement of certain Chinese companies to launch new BEV models in the Union was not indicative of increased exports to the Union because, as also noted by the Panel in *Dominican Republic – AD on Steel Bars (Costa Rica)* ([144]), the alleged 'intention' of exporting producers to export and gain market share was not sufficient to support the conclusion that further exports are imminent and likely.

(1059) The Commission did not conclude that the imports from China were going to increase solely based on the announcement of certain Chinese companies to launch new BEV models in the Union. This conclusion was made based on an assessment of (i) the nature of the subsidy or subsidies in question and the trade effects likely to arise therefrom, (ii) significant rate of increase of subsidised imports into the Union market indicating the likelihood of substantially increased imports, (iii) sufficient freely disposable capacity on the part of the exporter or an imminent and substantial increase in such capacity indicating the likelihood of substantially increased subsidised exports to the Union, account being taken of the availability of other export markets to absorb any additional exports, (iv) whether imports are entering at prices that would, to a significant degree, depress prices or prevent price increases which otherwise would have occurred, and would probably increase demand for further imports; and (v) the level of inventories as explained in recitals (1106) to (1159) of the provisional Regulation. Therefore, the claim was rejected.

(1060) Therefore, the conclusions set out in recitals (1119) to (1029) of the provisional Regulation as completed by recital (1045) of this Regulation were confirmed.

Likely evolution of market shares of Chinese imports on the Union market

(1061) Following provisional disclosure, the CCCME and the GOC also claimed that the Commission failed to examine and consider the imports from China of Tesla who is part of the Union industry and, therefore, failed to consider the full Union industry imports in its assessment of the likely evolution of market shares of Chinese imports on the Union market.

([144]) Panel Report, Dominican Republic – AD on Steel Bars (Costa Rica), para. 7.290.

(1062) This claim is factually wrong. In recital (1137) of the provisional Regulation, the Commission explained that the imports of Tesla from China were not expected to increase significantly as the spare production capacity of Tesla was very low, if any. According to public information, Tesla intended to increase its production capacity in China. However, Tesla appeared not to have received yet the necessary regulatory approvals and it is not clear whether it will receive them ([145]). The CCCME did not bring any evidence that the Commission assessment was not correct and did not make any comments. Therefore, the claim was rejected.

(1063) Following provisional disclosure, the CCCME and the GOC also claimed that the Commission's conclusion that the imports of the Union OEMs would not increase was not supported by evidence as (i) Volkswagen started producing and exporting a new model, the Cupra Tavascan, to the Union from December 2023 and these imports were not considered in the investigation period data, (ii) although the Commission claimed that BMW will not export its iX3 model from China to the Union from 2025, it ignored that BMW will export the Mini from China to the Union. Furthermore, the CCCME and the GOC also claimed that on 7 July 2024, BMW publicly stated that it would request the EU for an expedited review to obtain lower import tariffs for its Chinese BEVs to be exported to the EU and therefore, the CCCME and the GOC concluded that this would be unnecessary if the export volumes were to be small and would not increase.

(1064) In contrast to what was claimed by the CCCME and the GOC, in recital (1136) of the provisional Regulation, the Commission explained that BMW group intended to import from China the brand MINI Cooper and that the Volkswagen group would import the brand Cupra. The imports of the brand Cupra of Volkswagen group indeed could not be included in the investigation period as no such imports were made during that period. Furthermore, the claim that the BMW's imports from China could not be small if BMW intends to request an expedite review is pure speculative. Therefore, the claims were rejected.

(1065) Following provisional disclosure, the CCCME and the GOC also claimed that the Commission made no projections of the expected scenarios of the increase in imports of the Chinese BEVs and Chinese brand BEVs and their market. This claim was also reiterated after definitive disclosure.

(1066) In accordance with Article 8(8) of the basic Regulation, the Commission is not required to make projections of the expected scenarios of the increase in imports of the Chinese BEVs and Chinese brand BEVs and their market share. However, in recitals (1130) to (1138) the Commission explained the likely evolution of market shares of Chinese imports on the Union market. Therefore, the claim was rejected.

(1067) Following provisional disclosure, the CCCME and the GOC also claimed that the Commission did not assess the Chinese BEV imports in the context of the growing Union demand and the expected growth in the future. This claim was also reiterated after definitive disclosure.

(1068) This claim is also factually wrong. The analysis of the Commission regarding the Chinese BEV imports was also made based on market shares which take into account the growth in demand. For example, in recital (1128) of the provisional Regulation, the Commission stated that Transport & Environment estimates that the market share of the Chinese brands and the European brands purchased by Chinese companies would reach a market share of 11 % in 2024, 14 % in 2025 and 20 % by 2027. Therefore, the claim was rejected.

(1069) Following provisional disclosure, the VDA claimed that the Commission's conclusion in the provisional Regulation that the market share of the Chinese brands would increase in foreseeable future was misleading and ignored relevant points. In particular, the VDA stated that (i) this conclusion was based on recitals (1130) to (1137) of the provisional Regulation in which the Commission showed that the imports of Chinese brands increased, (ii) the Commission ignored in its assessment the fact that the market share of imports from European

([145]) https://www.reuters.com/business/autos-transportation/teslas-china-made-ev-sales-jump-687-yy-december-2024-01-03/#:~:text=Tesla's%20ambitious%20plans%20to%20expand,the%20Reuters%20Auto%20File%20newsletter.

OEMs increased by a factor of 18,3 between 2020 and 2022 according to Table 12a of the provisional Regulation, while the market share of imports from Chinese OEMs only increased by a factor of 2,7 in the same period, (iii) contrary to the Commission's statement in recital (1137) of the provisional Regulation that the market share of imports from China of Tesla decreased due to the fact that production capacity in China was low, the market share of imports of Tesla decreased because Tesla opened a production plant in Germany and thus supplies the Union market from Germany, (iv) in recital (1136) of the provisional Regulation, the Commission explained the planned launch of new and specific models by Union manufacturers in China and concluded that these would not lead to a significant increase in market share of Union related imports to the Union in the very short term and in the near future without explaining how the Commission came to this conclusion, while in recital (1138) of the provisional Regulation the assessment that the Chinese OEMs will gain market shares was made without naming specific models and therefore such conclusions could not be derived from the data presented and thus were drawn arbitrarily.

(1070) Point (i) is factually wrong. The recitals (1130) to (1137) of the provisional Regulation do not only explain that the market share of the Chinese brands increased between 2020 and the investigation period, but also why their market share is expected to increase in the foreseeable future.

(1071) As concerns point (ii), the Commission did not ignore the magnitude of the increase in market share of the imports made by European OEMs as compared to the increase in market share of the imports from Chinese brands. However, as concerns the foreseeable future, as explained in recitals (1136) to (1138) of the provisional Regulation, the Commission concluded that it was likely that there would be an increase of market shares mainly from Chinese brands. This conclusion was also confirmed by the post-IP data that showed that the imports of the Chines the brands increased significantly to 14 % in the second quarter of 2024, while the imports from European OEMs decreased as showed in Table 13 of this Regulation.

(1072) Point (iii) is also factually wrong. In recital (1137) the Commission stated that imports of Tesla from China were not expected to increase significantly as the spare production capacity of Tesla was very low, and not that it decreased. Furthermore, despite its factory in Germany, Tesla continues to import from China even the same BEV model that it manufactures in Germany.

(1073) Point (iv) is also factually wrong. The models of Chinese brands were stated in recitals (1126) and (1127) of the provisional Regulation. Furthermore, in recital (1136) of the provisional Regulation, the Commission stated that in contrast to the high number of announcements made by the Chinese exporting producers, the Union ICE OEMs transitioning to production of BEVs did not announce any major plans to import BEVs from China. As explained in recital (1071) of this Regulation, this conclusion was also confirmed by the post-IP data that showed that the imports of the Chines the brands increased significantly to 14 % in the second quarter of 2024, while the imports from European OEMs decreased as showed in Table 13 of this Regulation.

(1074) Therefore, these claims were rejected.

(1075) On the issue of Tesla and its production in Germany, following definitive disclosure, VDA stated that the Transport & Environment forecast showed that the market share of the Tesla BEVs produced in China dropped in 2023 as a result of Tesla's production in Germany. In view of this, the VDA argued that that adjustments in the international production network of manufacturers have effects on international import and export flows of their products and that the Commission's response missed this point.

(1076) The Commission did not question the fact that adjustments in the international production network of manufacturers had effects on international import and export flows of their products. Furthermore, VDA did not explain what concrete conclusions should be drawn from this general premise for the case at hand and did not clarify which point was missed in the Commission's response. Therefore, the claims were rejected.

(1077) Moreover, following provisional disclosure, the VDA claimed that the production of the German BEVs producers increased between 2020 and 2023 and that the perspective of European manufacturers, who have built up their production of BEVs to supply the Union market, was ignored in the findings, when in fact it drove the development of market shares.

(1078) This claim is without merit. The fact that the Union producers had built production facilities of BEVs to supply the Union market did not guarantee them sales on the Union market. Therefore, the claim as rejected.

(1079) Furthermore, following provisional disclosure, the VDA stated that the market shares of Chinese companies were too small to cause any injury or threat of injury.

(1080) The Commission did not consider that a market share of 7,3 % is small, especially considering that this market share was gained in a very short period of time, as showed in Table 12a of the provisional Regulation. Furthermore, as explained in recital (1138) of the provisional Regulation, the Commission concluded that there was likely that there would be an increase of market shares mainly from Chinese brands in the foreseeable future. This conclusion was confirmed by the post-IP data that showed that by the second quarter of 2024, the market share of the Chinese brands significantly increased to 14,1 % as showed in Table 13 of this Regulation. Therefore, the claim was rejected.

(1081) Following provisional disclosure, the VDA also claimed that the Commission drew conclusions about future developments of market shares based on past market shares, which was speculative and took insufficient account of future model ranges and the (European) manufacturers' international production networks.

(1082) This claim is also without merit. As explained in recital (1022) of this Regulation, the Commission did not conclude in the provisional Regulation that the imports from China and their market share would increase based on past trends. In fact, the Commission concluded that imports from China would increase after assessing several factors indicating the likelihood of further substantial increase in imports set out in recitals (1113) to (1118) of the provisional Regulation, the attractiveness of the Union industry in recitals (1119) to (1129) of the provisional Regulation, the likely evolution of market shares of Chinese imports on the Union market in recitals (1130) to (1137) of the provisional Regulation. Furthermore, the Commission concluded in recital (1138) of the provisional Regulation that it was likely that there would be an increase of market shares mainly from Chinese brands in the foreseeable future by assessing the high number of announcements made by the Chinese exporting producers for lunching new BEVs models on the Union market as explained in recitals (1126) and (1127) of the provisional Regulation, while the Union ICE OEMs transitioning to production of BEVs did not announce any major plans to import BEVs from China and most of them had one BEV model or brand that was imported from China in significant lower volumes as compared to their production in the Union. Moreover, the stocks of BEVs in the Union of Chinese BEVs as established in recitals (1157) to (1159) of the provisional Regulation are a relevant indicator for future pressure exercised by the Chinese BEVs on the Union industry as these quantities are clearly mainly intended for sale on the Union market. Therefore, the claim was rejected.

(1083) Following provisional disclosure, the VDA also claimed that in the coming years, the Union BEV market would undergo significant changes as several Union producers would introduce more affordable BEV models which will put further pressure on the market share of Chinese imports in the Union.

(1084) A similar claim was made by Company 24 that was summarised in recital (1165) of the provisional Regulation and addressed in recital (1166) of the provisional Regulation. Thus, while the Union industry intends to launch more models of BEVs for the Union market at different prices, the Chinese exporting producers are expected to adapt to these new BEV models and offer similar BEVs at even lower prices similarly to what occurred during the investigation period. Therefore, the claim was rejected.

(1085) Following provisional disclosure, the VDA claimed that the market share of Chinese brands would not increase significantly in the foreseeable future as according to S&P (AutoInsight) for 2030 the market share of Chinese manufacturers in the overall passenger car market in Europe would settle in the range of 5 to 10 %.

(1086) The Commission noted that the threat of injury must be imminent and therefore in its analysis, it considered that 'foreseeable future' as a shorter period of time than 2030. The Commission looked into foreseeable developments in 2025-2026. Furthermore, the post-IP data shows that the market share of the Chinese branded BEVs increased significantly in the second quarter of 2024 reaching 14 %, as showed in Table 13 of this Regulation. Therefore, the claim was rejected.

(1087) Following definitive disclosure, and with reference to recitals (1072), (1085) and (1086) of this Regulation, the VDA argued that the Commission had not proven that injury will materialise in the future.

(1088) The Commission recalled that the relevant legal standard is not to prove that injury will materialise. The legal standard is to show the existence of a threat of injury, and this standard has been met. Therefore, the claim was rejected.

(1089) Moreover, the VDA considered it unclear why the Commission used Transport & Environment forecasts instead of S&P Data Mobility forecasts. In particular, the VDA questioned whether the methodology applied in the Transport & Environment forecast, which assumes a linear growth of Chinese manufacturers' market shares, was appropriate, and why it was used to determine future threats. Moreover, the VDA stated that according to GlobalData's Global Hybrid and Electric Vehicle Forecast, Chinese manufacturers would each achieve a market share of 6 % per cent in the European BEV market in 2027, and thus remain significantly below the 20 per cent in 2027.

(1090) The Commission does not have access to an estimation of market shares by S&P Mobility nor by GlobalData and VDA did not submit such data either. Furthermore, the VDA did not explain why the S&P Mobility forecast would be more reliable. In any event, the Commission noted that its threat of injury assessment did not rely on the forecast of Transport & Environment. As explained in recital (1082) of this Regulation, the Commission reached its conclusions after assessing several factors indicating the likelihood of further substantial increase in imports. As regards VDA's reference to the GlobalData report, the Commission noted that, in view of the high number of Chinese manufacturers, it was not clear how each of them could achieve a 6 % market share, while their total market share would remain below 20 %. Therefore, the claims were rejected.

(1091) Referring to recitals (1126), (1127) and (1129) of the provisional Regulation, the VDA also claimed that the announcements of product launches did not constitute a threat of injury, also because sometimes the respective plans do not fully materialise and provided some examples in this regard.

(1092) The Commission noted that while announcements do not constitute a threat of injury by themselves, they are a relevant factor to be taken into account in a threat of injury assessment. In this case, even if not all announcements by Chinese manufacturers materialise fully, taken together they show a clear trend towards a considerable expansion of their presence in the Union market, both in terms of geographic scope as well as in terms of product scope. The claim was therefore rejected.

(1093) Finally, the VDA referred to recital (1122) of the provisional Regulation which describes the prices differences between the Chinese and the Union market for China produced BEVs. The VDA considered that such differences are not unusual and questioned their relevance for the threat of injury assessment. Moreover, the VDA argued that the models listed as examples by the Commission have a volume of less than 30 000 units in the Union market and are expected to gain a very small market share and that therefore, cannot cause injury to the Union industry.

(1094) The Commission did not dispute that for many products, differences in prices between national markets are common and can be explained by a multitude of factors. As explained at the end of recital (1122) of the provisional Regulation, these price differences and trends indicate the high attractiveness of the Union market for Chinese BEV producers. The differences in prices, and the associated differences in profits, provide strong incentives to Chinese BEVs producers to expand their presence in the Union market. The Commission also clarified that the threat of injury to the Union industry, for which the attractiveness of the Union market is one of the relevant factors, did not come from only the models that were used as examples, but from the Chinese imports in their totality. Therefore, the claims were rejected.

(1095) Following provisional disclosure Company 18 claimed that they disagreed with the estimations of the market share of Chinese brands by Transport & Environment stated in recital (1128) of the provisional Regulation and that on the largest three markets in the Union S&P Global Mobility expects the Chinese brands to have a market share of 10 % by 2030.

(1096) As mentioned in recital (1086), the time frame assessed in threat of injury case is shorter than 2030, i.e. 2025 – 2026. Furthermore, as stated in Table 13 of this Regulation, the market share of the Chinese brands in the second quarter of 2024 already reached 14,1 %. Therefore, the claim was rejected.

(1097) Therefore, the conclusions set out in recitals (1130) to (1134) of the provisional Regulation were confirmed.

5.3.3. *Sufficient freely disposable capacity and absorption capacity of third country markets*

(a) Capacity, spare capacity and production in China

(1098) Following provisional disclosure, the CCCME and the GOC also claimed that the total Chinese BEV capacity and spare capacity data calculated by the Commission as described in recitals (1140) to (1143) of the provisional Regulation was not accurate (i) as the data on production volume reported by the CAAM on which the Commission relied had a much broader coverage as it concerned all battery electric vehicles and included products not included in the product scope of this investigation such as commercial vehicles, vans for the transportation of goods, etc., and vans with a capacity higher than nine persons, and (ii) due to a clerical error and the use of a wrong CAAM production figure for the investigation period.

(1099) The Commission disagreed with this claim. The data used by the Commission was production of BEVs for passenger vehicles. The production data for commercial vehicles is reported separately by the CAAM and this data was not used by the Commission. Furthermore, there is no evidence showing that the data for BEVs for passengers includes vans for the transportation of goods and vans with a capacity higher than nine persons. Moreover, the Commission rechecked the production data for BEVs reported by the CAAM for the investigation period and it confirmed that the data reported in Table 14 of the provisional Regulation was correct. Moreover, there was no clerical error in the calculation of the capacity and spare capacity for the investigation period. The potential difference obtained by the CCCME comes from rounding as the exact capacity utilisation rate for the investigation period was 63,6 % while the Commission reported the rounded amount of 64 % in Table 13 of the provisional Regulation. Therefore, this claim was rejected.

(1100) Following provisional disclosure, the CCCME and the GOC also claimed that the Commission's methodology and extrapolation of the data and calculation was based on erroneous and unsubstantiated assumptions that (a) there were 100 Chinese BEV producers present on the Chinese market, and (b) the production capacities of all these companies evolved at the same rate as those of the 21 cooperating Chinese BEV producers. The CCCME and the GOC also stated the Commission should not have assumed that all Chinese EV manufacturers referred to by Bloomberg produced BEVs and that the 21 Chinese groups of exporting producers that submitted a sampling reply in the investigation were not representative. Furthermore, the CCCME and the GOC claimed that the Commission should use the capacity utilization rate of the sampled Chinese BEV producers and Tesla which was verified by the Commission in order to assess the capacity utilization rate of the Chinese companies. This claim was also reiterated after definitive disclosure.

(1101) As it was explained in recital (1139) of the provisional Regulation, the GOC did not provide a list of the BEV manufacturers in China and therefore, the Commission had to resort to publicly available information in this regard. Nevertheless, whether there are 100 or 50 BEVs producers in China was irrelevant as explained in recital (1141) of the provisional Regulation. Thus, the production, capacity and spare capacity data based on the information provided by the cooperating exporting producers was incomplete as confirmed by the information published by the CAAM. The latter showed that the total production volume of BEVs in China was of 5,8 million as compared to 3,9 million which was the total production volume of the Chinese exporting producers that submitted a sampling form. In the absence of any other information, the Commission had no choice but to assume that the Chinese producers of BEVs that did not come forward in the investigation had the same capacity utilisation rate as the Chinese exporting producers that came forward in order to calculate the total capacity and spare capacity of BEVs in China. Furthermore, as concerns the CCCME and the GOC's claim that the Commission should use the capacity utilization rate of the sampled Chinese BEV producers and Tesla and thus ignore the respective data reported by the non-sampled exporting producers, the Commission noted that there was no justification or objective reason to reject the data available in the file and replace it by estimates. Finally, the Commission noted that neither the CCCME nor the GOC submitted more accurate data regarding the total capacity and spare capacity of BEVs in China. Therefore, the claims were rejected.

(1102) Following provisional disclosure, the CCCME and the GOC also claimed that the Commission's finding that the Chinese ICE capacity was significant and that it could be switched to the production of BEVs was merely an assumption. They argued that that the Commission based its estimate of Chinese ICE capacity on a mixture of press reports, while there was no evidence available that the ICE capacity would be switched to BEVs nor was there any reason to believe that this would be the case. Furthermore, the CCCME and the GOC stated that a large part of the BEV production capacity in China was owned by the Union producers and that they used it to manufacture BEVs for the Chinese and the Union market as well as other third country markets.

(1103) In recital (1142) of the provisional Regulation, Commission, in the absence of any other more reliable source, used for the determination of the production capacity in China for NEVs and ICE passenger information reported by the China Daily which took the information from the China Passenger Car Association and therefore such information was considered sufficiently reliable, in particular considering that no other information was available. Again, the CCCME and the GOC only criticised the source of information used by the Commission, but it did not submit any more accurate data. The fact that the production for ICE could be switched to the production of BEVs was explained by the Union producers during the on-spot verification. Whether the Chinese exporting producers will eventually switch capacity from ICE vehicles to BEVs is not relevant, but whether such switch is realistically feasible which is indeed the case. Furthermore, the fact that some of the production capacity in China is owned by the Union industry is also irrelevant as all subsidized imports of BEV originating in China are subject to the current investigation, regardless of the ownership of a specific company as explained in recital (1131) of the provisional Regulation. Therefore, the claim was rejected.

(1104) Furthermore, following provisional disclosure, the CCCME and the GOC claimed that in the calculation of the spare capacity, the Commission did not consider that (i) in the vehicle manufacturing sector producers cannot reach 100 % capacity utilization due to e.g. production bottle-necks and supply chain constraints, (ii) the main BEVs producers, according to publicly available data, have nearly 90 % capacity utilization, (iii) there were many regulatory requirements to sell in the Union preventing that every BEV producer can also sell on the Union market and every BEV manufactured in China can be placed on the Union market, (iv) the estimated BEV spare capacity in China was reducing as domestic demand was increasing, (v) several producers have shut down production/abandoned production plans, therefore, there were clear indicators that capacity was reducing. In addition, these parties claimed that the GOC has implemented a stricter licensing regime for regulatory approvals that impacted companies when establishing new production of electric vehicles in China and noted that this was also acknowledged by the Commission in recital (1143) or the provisional Regulation.

(1105) As explained in recitals (1140) and (1141) of the provisional Regulation, the Commission calculated the capacity utilisation rate of all 21 Chinese exporting producers that submitted a sampling form based on the data submitted by them. Therefore, the fact that certain BEVs producers have nearly 90 % capacity utilization was irrelevant in this regard. Furthermore, the Commission did not conclude that the entire spare capacity of the Chinese exporting producers would be directed to the Union, but merely calculated the potential spare capacity available based on the information it had at its disposal. Therefore, the arguments mentioned on points (i) and (iii) were irrelevant. As already before, the CCCME and the GOC criticised the sources and methodology used by the Commission, but did not submit any more accurate data, or any data at all. As concerns point (iv), the Commission assessed the domestic demand in China in recitals (1145) to (1148) of the provisional Regulation and concluded that the domestic market in China would not be able to absorb the large spare capacity. Thus, contrary to the CCCME and the GOC's claim, the Commission did not conclude that none of the spare capacity will be absorbed by the domestic demand, but that the available spare capacity by far exceeded the domestic demand in China. Regarding point (v), the CCCME has not submitted any evidence in support of its arguments. Furthermore, the stricter licensing regime for regulatory approvals mentioned in recital (1143) of the provisional Regulation is linked to future capacity in China and could therefore not have had an impact on the Chinese capacity estimated for the period considered. In addition, in the same recital the Commission also stated that, regardless the stricter regulatory regime, new BEV producers are still setting up in China such as the Chinese smart consumer electronics maker Xiaomi and neither the CCCME nor the GOC contradicted this information, which indicates that the stricter rules as such do not prevent the production capacity in China to be still increasing. Therefore, these claims were rejected.

(1106) Moreover, following provisional disclosure, the CCCME and the GOC asserted that it was 'ironic and paradoxical' how the Commission 'accused' the Chinese exporting producers of overcapacity and alleged a threat of increased imports from China when, in fact, (i) the spare capacity of the Union BEV producers is even more significant when compared to demand in the Union market and considering that the Chinese market is nearly three times the size of the Union market, (ii) the spare capacity in the Union in absolute terms, was similar to that calculated by the Commission for China, and (iii) while the spare capacity in China has been reducing, it has been increasing in the Union.

(1107) The Commission did not 'accuse' China of overcapacity in the framework of the investigation. It merely assessed the production capacity and the spare capacity in China in accordance with Article 8(8)(c) of the basic Regulation as a legal condition in the assessment whether there is a threat of injury in the framework on the present investigation. The finding of the overcapacity in China is therefore merely factual. Furthermore, the spare capacity of the Union industry is irrelevant for the assessment of the threat of injury caused by the subsidised BEVs imports from China. Likewise, the threat of an increase of imports from China was established based on facts and evidence collected during this investigation as explained in Section 5.3 of the provisional Regulation and Section 5.3.2 of this Regulation. Therefore, these claims were rejected.

(1108) Following provisional disclosure, the VDA disagreed with the Commission's conclusion in the provisional Regulation that the overcapacity in China will be used for increasing imports into the Union as the existence of overcapacity in China did not mean that customers in the Union will automatically buy these imports.

(1109) This claim is without merit. The Commission did not state in the provisional Regulation that the existence of an overcapacity in China meant that customers in the Union would automatically buy Chinese overcapacities. In fact, in recitals (1119) to (1128) of the provisional Regulation, the Commission assessed the attractiveness of the Union market as compared to other potential export markets for the Chinese exporting producers and concluded in recital (1129) of the provisional Regulation that in view of the GOC's policy to encourage Chinese producers to export BEVs, the high attractiveness of Union market, the massive overcapacity in China as well as the fact that the volume of BEVs imports from the PRC has increased significantly since 2020, indicated the likelihood that such imports will continue to increase significantly in short term and continue to increase over the following years; the Commission also concluded that this increase in imports would mainly come from the Chinese homegrown brands and European brands purchased by Chinese companies and would be at the expense of the Union industry, which will likely continue losing its market share. This conclusion is also confirmed by the post-IP data as shown above in Section 5.2.1 that shows that the market share of the Chinese branded BEVs increased significantly in the second quarter of 2024 reaching 14 %, while the market share of the imports of the Union industry is decreasing as showed in Table 13 of this Regulation. Therefore, the claim was rejected.

(1110) Following definitive disclosure, the CCCME and the GOC claimed that there was a minor clerical error in the production data reported by the CAAM and used by the Commission for the investigation period (i.e. production was 5 818 000 BEVs and not 5 836 000 pieces).

(1111) The Commission noted that this clerical error was in fact on CAAM's website. The volume of production for January to September 2023 reported by CAAM on an aggregated basis did not reconcile with the sum of the individual production on a monthly basis during this period. The discrepancy was in August and September. As the Commission did not know which data is the correct one and the difference was in any event minor, it did not revise the data in Table 14 of the provisional Regulation.

(1112) Following definitive disclosure, the CCCME claimed that a comparison between the BEV sales in China noted by the Commission in Table 15 of this Regulation and the total BEV production noted in Table 14 of the provisional Regulation showed that there were limited or no stocks in each year of the investigation period and the entire Chinese BEV production was being sold. The CCCME and the GOC further claimed that this also seemed to suggest that there could not have been 3,2 million BEVs worth spare capacity in the investigation period as calculated by the Commission.

(1113) The Commission did not claim that there were stocks in China of BEVs. Furthermore, contrary to the CCCME and the GOC's claim, the spare capacity is calculated as the difference between production capacity and production and has nothing to do with the stocks. Therefore, this claim was rejected.

(1114) Therefore, the conclusions set out in recitals (1139) to (1144) of the provisional Regulation were confirmed.

(b) Demand in China

(1115) Following provisional disclosure, the CCCME and the GOC also claimed that the data concerning total BEV demand in China relied upon by the Commission in the provisional Regulation was underestimated and provided in this regard the consumption of BEVs in China as reported by PwC ([146]).

(1116) In the questionnaire for the GOC the Commission asked the GOC to provide the data on the registrations of BEVs in China. However, the GOC did not submit any data in this regard and claimed that it did not have such data. The Commission therefore looked for other sources to determine the registrations/demand of BEVs in China during the period considered, as indicated in recitals (1145) and (1146) of the provisional Regulation. On this basis the Commission based its analysis on publicly available verifiable sources including the CAAM.

(1117) The Commission noted that there was no reference in the PwC report that the data on BEVs related to passenger cars only. At the request of the Commission, the PwC confirmed that the data reported included both passengers and commercial vehicles ([147]). Based on this information, the Commission compared the data reported by the CAAM and the GOC for sales of passenger cars and commercial vehicles with the data reported in the PwC report. As a result, during 2020-2022 there is only a small difference between the data reported by PWC and the total sales of BEVs (passenger cars and commercial vehicles) as shown in the Table 14 below. Furthermore, the Commission noted that for the investigation period the CCCME and the GOC reported the data for 2023, which was considered misleading as the investigation period runs from October 2022 to September 2023. Furthermore, the exact amount for the investigation period for registration cannot be calculated based on the data reported by PWC.

([146]) https://www.strategyand.pwc.com/de/en/industries/automotive/electric-vehicle-sales-review-2023-q4.html.
([147]) t24.007106.

(1118) The Commission could therefore reasonably rely on the data available by the CAAM in its provisional determination.

Table 14

Sales of BEVs in China

	2020	2021	2022	Investigation period
Sales of BEVs passenger cars reported by CAAM	1 000 000	2 734 000	5 033 000	5 854 000
Sales of BEVs commercial vehicles reported by CAAM	116 000	182 000	331 000	410 000
Total	1 116 000	2 916 000	5 364 000	6 264 000
Registration of BEVs reported by PWC	1 065 557	2 901 000	5 351 000	NA

(1119) Nevertheless, in Table 15 below, in the absence of any other more reliable available information, the Commission replaced the data in Table 15 of the provisional Regulation with the data in Table 15 below in which it calculated the demand of BEVs in China based on the sales of BEVs passenger cars as reported by CAAM and the imports of BEVs, as it considered that it gave a more accurate picture of the demand in China. Furthermore, as it was not clear whether the sales of BEVs as reported by the CAAM did not include the exports of BEVs, the Commission, in view to avoid any overestimation of the demand in China, also calculated the demand of BEVs in China based on the on the sales of BEVs passenger cars as reported by CAAM and the imports of BEVs and subtracts the volume of exports.

Table 15

Demand of BEVs in China

Pieces	2020	2021	2022	Investigation period
Sales of BEVs passenger cars reported by CAAM	1 000 000	2 734 000	5 033 000	5 854 000
Imports of BEVs	8 201	2 215	3 499	13 930
Total sales (demand)	1 008 201	2 736 215	5 036 499	5 867 000
Exports of BEVs	33 731	171 822	328 391	486 550
Sales without exports (demand)	974 470	2 564 393	4 708 108	5 380 450

Source: CAAM and GTA (HS code 8703 80).

(1120) Therefore, the demand in China for BEVs in the investigation period was estimated between 5,4 and 5,9 million BEVs.

(1121) It follows that the first sentence in recital (1148) of the provisional Regulation is replaced with the recital below.

(1122) A 20 % increase in 2024 of the BEV market in China translated into 6,5 to 7,0 million BEVs, as compared to a capacity of more than 9 million BEVs.

(1123) Following provisional disclosure, the CCCME and the GOC also claimed that as the Chinese BEV market was much larger than the Union market in absolute terms and the growth rate was also significantly higher than that in the Union market, which the Commission failed to consider in its provisional conclusions. According to the CCCME and the GOC the Commission also failed to consider the expected growth rate in China. Therefore, these parties claimed that from a commercial point of view, the Chinese market is much more attractive and much more important for Chinese BEV producers. This claim was reiterated after definitive disclosure.

(1124) The Commission in the provisional Regulation in recitals (1119) to (1129) described in detail why it considered that the Union market was attractive to the Chinese exporters. These findings have been confirmed in recitals (1045) to (1060) of this Regulation. In this context it is irrelevant whether the Chinese market is larger than the Union market in size, because it has been shown that despite this fact, the overcapacity in China by large exceeds their (expected) domestic demand and free capacities will likely be largely directed to the Union market. Therefore, the claim was rejected.

(1125) Following provisional disclosure, the CCCME and the GOC also claimed that the Commission did not assess the expected growth in the Chinese domestic demand, even though it was required to conduct a forward-looking analysis. This claim was reiterated after definitive disclosure.

(1126) This claim was factually wrong. In recitals (1146) and (1148) of the provisional Regulation, the Commission estimated that the demand in China of BEVs will increase in 2024 by 20 %.

(1127) Therefore, the conclusions set out in recitals (1145) to (1148) of the provisional Regulation as revised by recitals (1119) to (1122) of this Regulation were confirmed.

(c) Exports of China and availability of other exports markets

(1128) Following provisional disclosure, the CCCME and the GOC claimed that the total export volume of China and the export volume to the Union reported by the Commission in Table 16 of the provisional Regulation was overstated. They reported lower data claiming that the source of this data was China Customs Statistics which would be more accurate that the GTA, the source used by the Commission.

(1129) As explained in recital (737) of this Regulation, in its reply to the questionnaire, the GOC submitted very similar export data as the one used by the Commission in Table 16 of the provisional Regulation. Therefore, it was unclear why the GOC was challenging this data. Furthermore, the Commission noted that the CCCME and the GOC did not explain which Chinese product code they used for the data provided. It is noted that also GTA uses as source data from the China Customs Statistics. As mentioned in recital (738) of this Regulation, the Commission, when extracting export data from GTA used HS code 8703 80. Moreover, when comparing the data submitted by the CCCME and the GOC with the actual Chinese BEVs that were sold and registered reported in Table 2b of the provisional Regulation, it can be seen that the number of registered Chinese BEVs, based on EEA and S&P Global Mobility, were always significantly higher that the imported BEVs which indicated that the volume of Chinese BEVs exported to the Union as reported by the CCCME and the GOC was significantly understated.

Table 16

Chinese exports to the Union vs Registered imported BEVs from China

	2020	2021	2022	Investigation period
Chinese exports to the EU reported by the CCCME	16 930	66 079	200 096	296 637
Registered Chinese BEVs reported in table 2b of the provisional Regulation	18 934	132 768	246 090	346 345
Difference	12 %	101 %	23 %	17 %

(1130) Therefore, the conclusions set out in recitals (1149) to (1152) of the provisional Regulation were confirmed.

(d) Conclusion

(1131) The conclusions set out in recital (1153) of the provisional Regulation were confirmed.

5.3.4. *Price level of subsidised imports*

(1132) Following provisional disclosure, the CCCME and the GOC claimed that (i) the Commission did not assess the prices of the self-imports notwithstanding their relevance in the total BEV imports from China in the entire period considered, (ii) the Commission made an incorrect and unrepresentative finding of undercutting for one year of the period considered, i.e. the investigation period based on the data of the Chinese brand BEV producers included in the sample and the price suppression analysis was based on a comparison with transfer prices of the Chinese BEV imports and at a different level of trade, (iii) as the Commission found that the market competitors influence pricing of BEVs on the Union market and the leading BEV brands and models on the Union market are the ones produced by the Union producers, it follows that the Chinese BEV brand prices were influenced by those of their competitors for the main models and not vice versa, (iv) there was no assessment of the future pricing of the Chinese BEV imports and the sales of the Union industry, nor was there an assessment of the cost development of the Union industry and therefore, there were no bases for future projections in this regard.

(1133) As regard point (i), as explained in recital (1131) of the provisional Regulation, all subsidized imports of BEV originating in China were subject to the current investigation, regardless of the ownership of a specific company. Regarding point (ii), the comments on undercutting and price suppressions were already addressed in recitals (764) to (811) of this Regulation. As concerns point (iii), it is recalled that the Chinese BEV imports undercut the Union industry sales prices of BEVs on average by 12,7 % in the investigation period as set out in recital (1029) of the provisional Regulation. Finally, as regard point (iv), there was no such legal requirements in determining the price undercutting and price suppression during the investigation period. Regarding the future development of imports, the Commission assessed all criteria set out in Article 8(8) of the basic Regulation which is the applicable legal standard. Therefore, these claims were rejected.

(1134) Following definitive disclosure, the CCCME and the GOC claimed that the investigation established that there was no data on prices of the Chinese BEV imports at a comparable level with that of the Union BEV producers for each year of the period considered to reach a finding (i) of low prices of the Chinese BEV imports throughout the period considered, and (ii) that the low prices of these imports permitted them to take over market share from the Union producers over the period considered. Therefore, the CCCME argued that on this basis alone the Commission's threat of injury assessment was inconsistent with Articles 15.1, 15.2 and 15.7 of the SCM Agreement.

(1135) The Commission disagreed with this claim. As explained in recital (793) of this Regulation, for the analysis of price effects, the Commission carried out two alternative price effect assessments, i.e. (i) price undercutting and (ii) price suppression (namely the imports prevent the Union industry from increasing the selling price, which results in loss of profitability). The price undercutting was established for the investigation period and showed undercutting of at least 12,7 %.

(1136) The price suppression was assessed for the entire period considered as showed in recital (1033) of the provisional Regulation. The development of sales prices and unit production costs in the Union throughout the period considered in Table 7 of the provisional Regulation showed evidence of significant price suppression. The Union industry was unable to raise its prices to cover its costs. This meant that the Union industry incurred financial losses on sales of BEVs throughout the period considered. Furthermore, as explained in recital (1080) of the provisional Regulation, the BEV market is a highly competitive and rapidly evolving market with very transparent prices which makes the BEV market very price sensitive. Therefore, the low-price BEVs from China were capable of exercising significant price pressure on Union industry sales. Without the imports from China, the Union industry would have been able to produce and sell more on the Union market and cover the fixed costs and therefore decrease the unit cost of production of the BEV and thus decrease their financial losses or even become profitable. This price pressure was exacerbated in the investigation period when the market share of the Chinese BEV was the highest and the financial losses of the Union industry started to increase, thus reversing the positive development made in the period 2020 and 2022. The losses of the Union industry further increased post-IP. Therefore, the claim was rejected.

(1137) Therefore, the conclusions set out in recitals (1154) to (1156) of the provisional Regulation were confirmed.

5.3.5. *Level of inventories*

(1138) Following provisional disclosure, the CCCME and the GOC claimed that the Commission's assessment of inventories was insufficient to conclude that there was an imminence of a substantial increase in imports and material injury as (i) the Commission did not assess the inventories in China which could be exported to the Union and since the stocks of the sampled exporting producers were already in the Union and accounted for in the import volume, they could not be double counted, (ii) the press reports of high inventories of certain Chinese BEV brands were based on hearsay, were not actual evidence from customs authorities and the Commission, therefore, should have checked this aspect with the customs authorities of the concerned EU Member States, (iii) the Commission did not provide a reasoned explanation as to why the basic business principle that BEVs were generally made to order that applied for the Union industry did not apply for the Chinese producers.

(1139) First, in the provisional Regulation, the Commission concluded that the imports from China will increase significantly in the foreseeable future based on all the elements explained in recitals (1106) to (1164) and was thus not merely based on the Chinese BEVs inventories in the Union. Second, concerning point (i), as it was explained in recitals (1010) to (1017) of the provisional Regulation, the Commission assessed both the imports from China and the imports from China that were sold and therefore registered in the Union. Therefore, the stocks of BEVs in the Union of Chinese BEVs are a relevant indicator for future pressure exercised by the Chinese BEVs on the Union industry as these quantities are clearly mainly intended for sale on the Union market. Third, concerning point (ii) the information from the press report was not hearsay, but information reported by the journalists as stated in recital (1158) of the provisional Regulation. Fourth, as concerns point (iii) regarding an explanation as to why the basic business principle that BEVs were generally made to order and applied for the Union industry did not apply for the Chinese industry, the Commission noted that this is a fact, a characteristic of the industry and therefore the Commission did not need to explain why it was as such. Also, the Commission noted that the CCCME and the GOC did not provide any evidence against this fact. Therefore, these claims were rejected.

(1140) Following provisional disclosure, the VDA claimed that a comparison between the stocks of Chinese imports in the Union and the low stocks of the Union industry was misleading, as the Union industry works on orders and has therefore lower stocks, which is a characteristics of the Union automotive market that should have been taken into account. They also claimed that the fact that there were high stocks in the European ports as such were irrelevant as these quantities still need to find buyers.

(1141) Contrary to VDA's claim, the Commission did not make such a comparison. In fact, in recital (1157) of the provisional Regulation, the Commission stated that the stocks of Chinese BEVs on the Union market were available for sale on the Union market. Furthermore, the Commission refers to its conclusions under recital (1139) of the provisional Regulation, where the fact that high stocks were available reinforced the imminent nature of the threat of injury to the Union producers. It is irrelevant in this regard whether buyers were found or would still have to be found for these stocks, in particular considering the expected market growth for BEVs. Therefore, these claims were rejected.

(1142) Following provisional disclosure, Company 18 claimed that there could be different reasons for the existence of stocks such as limited market success of Chinese brands and that therefore the Commission's conclusions in this regard were erroneous.

(1143) This claim was considered speculative as it was not supported by any further evidence and was without any basis. The Commission also considered that post-IP data showed that the market share of the Chinese brands significantly increased as showed in Table 13 of this Regulation and therefore cannot be considered as having limited market success. Therefore, the claim was rejected.

(1144) Following definitive disclosure, the CCCME and the GOC claimed that during the post-IP period the stocks of the Chinese exporters in the Union were not excessive and in fact, extremely limited.

(1145) The Commission rejected this claim in recital (973) of this Regulation.

(1146) Therefore, the conclusions set out in recitals (1157) to (1159) of the provisional Regulation were confirmed.

5.3.6. *Foreseeability and imminence of the change in circumstances*

(1147) Following provisional disclosure, the CCCME and the GOC claimed that the Commission did not (i) specify the change in circumstances that would create a situation in which the alleged subsidization would cause injury in the future, (ii) provide an appropriate explanation for the change in circumstances which would create a situation in which the alleged subsidization would cause injury that is 'clearly foreseen and imminent', and (iii) on which basis the injury can be deemed to be foreseen and imminent considering that the majority of the imports were self-imports by the Union producers and the Commission did not take into account the expected demand growth in the Union which precludes any assumption of injury materializing.

(1148) As regards points (i) and (ii), such explanations were provided in recitals (1162) and (1163) of the provisional Regulation. As concerns point (iii), as explained in recital (1131) of the provisional Regulation, all subsidized imports of BEV originating in China are subject to the current investigation, regardless of the ownership of a specific company. Furthermore, in recital (1162) of the provisional Regulation, the Commission explained that in the context of a booming consumption, the Union industry was consistently losing market shares throughout the period considered at the expense of the subsidised imports from China, achieving the lowest point during the investigation period. Therefore, these claims were rejected.

(1149) Following provisional disclosure, the Geely Group also claimed that the Commission's findings do not point to any change in circumstances that suggests otherwise. In this regard, the Geely Group stated that the Commission considered in recital (1169) of the provisional Regulation that that the change in circumstance was present because profitability, return on investment, and cash-flow deteriorated in the investigation period, however, this factual findings was contradicted by the Commissions' findings in recital (1099) of the provisional Regulation that profitability and return on investment showed 'positive trends' throughout the period considered.

(1150) Table 10 of the provisional Regulation clearly showed that between 2020 and 2022 the profitability margin of the Union industry increased from – 22,3 % to – 8,9 % and then decreased to – 10,8 % in the investigation period. The return on investment and the cash flow had the same trend as the profitability margin, i.e. an increasing trend between 2020 and 2022 and then deteriorating in the investigation period. Therefore, the claim was rejected.

(1151) Following provisional disclosure, the Geely Group also claimed that the Commission failed to explain how it could find a threat of injury, while finding, at the same time, that the Union industry showed positive trends on several key indicators such as profitability return on investment, capacity utilisation, productivity, sales volume and export volume throughout the period considered. The Geely Group argued that there was no basis to suggest that these positive trends will be reversed in the future. The Geely Group further claimed that if no injury to the Union industry was present during the investigation period, it followed that no injury is foreseen and imminent, if the cause behind the positive trends during the investigation period will remain present, and likely strengthen after the investigation period.

(1152) The Commission disagreed with this claim. In recital (996) the Commission explained that the transition of the Union market from ICE vehicles to BEVs represented a relevant factor in this case which affected a number of indicators relating to the state of the industry. Furthermore, in recitals (1095) to (1099) of the provisional Regulation, the Commission explained that the situation of the Union industry must be analysed in the context of the Union market transitioning from ICE vehicles to BEVs and summarised the findings on the Union consumption, imports from China and when analysing the injury indicators. Furthermore, in recital (1102) of the provisional Regulation, the Commission explained that the transitioning from ICE to BEV started to be impeded towards the end of the period considered and in particular during the investigation period, when the highest volumes of Chinese imports and the highest drop of market share by the Union industry could be observed. This was also shown by the fact that, despite the improving trends for some indicators during the period considered, most financial indicators were still negative and even started to deteriorate during the investigation period, including profitability, return on investment, and cash-flow. Even more tellingly, market shares consistently decreased throughout the period considered, achieving the lowest point at the end of the investigation period. Finally, in Section 5 of the provisional Regulation, the Commission explained all the elements that supported a finding of threat of injury under Article 8(8) of the basic Regulation. Therefore, these claims were rejected.

5.3.7. *Other comments*

(1153) Following provisional disclosure, the Geely Group claimed that the Commission disregarded evidence that showed that the transition to BEVs will continue and was likely to accelerate, including to the benefit of Union producers, as a result of market and regulatory dynamics, such as the ban on the sale of internal combustion engine (ICE) vehicles from 2035 onwards and the mandatory targets to accelerate the deployment of infrastructure across the Union for BEVs ([148]).

(1154) The Commission disagreed with this claim. As it was explained in recital (996) of the provisional Regulation, the Union market was transitioning from ICE vehicles to BEVs, which was a relevant factor in this case which affected a number of indicators relating to the state of the industry. Furthermore, in recital (1009) of the provisional Regulation it was explained that the increase in the number of BEVs registered as a percentage of all passenger vehicle registrations shows a progressive transition of the Union market from ICE passenger vehicles to BEVs, which was 14,6 % in the investigation period as showed in Table 1 of the provisional Regulation. Furthermore, in recitals (1222) and (1223) of the provisional Regulation the Commission set out the impact of the European Green Deal ([149]) and specific emission targets for all new passenger cars. Moreover, in recital (1224) of the provisional Regulation, the Commission explained that the specific emission targets can in particular be achieved through a growing proportion of electric vehicles in the fleet. However, the Union industry will not be able to produce and sell sufficient BEVs on the Union market due to the rapid increase of imports of subsidised BEVs from China sold on the Union market at injurious prices. Therefore, the claim was rejected.

([148]) Regulation (EU) 2023/1804 of the European Parliament and of the Council of 13 September 2023 on the deployment of alternative fuels infrastructure, and repealing Directive 2014/94/EU (OJ L 234, 22.9.2023, p. 1).

([149]) https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_en.

(1155) Following provisional disclosure, the CCCME, the GOC and the Geely Group claimed that the Commission failed to take into account the support for the Union BEVs industry, at present and in the future, at the Union and Member State level.

(1156) The support that the Union BEV industry is allegedly receiving or will receive in the future has no bearing on the investigation as it is not comparable with the countervailable subsidies received by the Chinese BEVs exporting producers, that cause threat of injury to the Union industry. Any support received by the Union industry is in any event not countervailable and such support does not cause injury to the Chinese BEVs producers as only very small volumes of BEVs are exported by the Union industry to China. Furthermore, whether the Union industry receives support, does not mean that it should compete on unfair terms on the Union market. The subsidised Chinese BEVs sold at low prices threaten to cause material injury to the Union industry and thus distort the level playing field on the Union market. Therefore, the claim was rejected.

(1157) Following provisional disclosure, the Geely Group stated that it was apparent from the provisional Regulation that the perceived threat to the Union industry stemmed from Chinese brand BEVs, such as Geely Group, however the Commission obfuscated the fact that the market share of these imports was only 7,3 % in the investigation period, while most of the imports from China were made by the Union producers and Tesla. The Geely Group also stated that the choice of the Union producers to set up global supply chains in China could not justify a finding that these same Union producers are in a vulnerable situation. Furthermore, the Geely Group stated that in granting anonymity to Union producers, the Commission further obfuscated this factor.

(1158) The Commission disagreed with this claim. In recitals (1135) to (1138) the Commission demonstrated that there will be an increase of market shares mainly from Chinese brands in the foreseeable future. As explained in recital (1071) of this Regulation this conclusion was also confirmed by the post-IP data that showed that the imports of the Chines the brands increased significantly to 14 % in the second quarter of 2024, while the imports from European OEMs decreased as showed in Table 13 of this Regulation. Therefore, the claim was rejected.

(1159) Following provisional disclosure NIO claimed that the Commission's findings that the Union industry are in a situation of a threat of material injury was based on conjecture and remote possibilities and not on facts since (i) the Union industry significantly increased its production volume, capacity and sales during the period considered and (ii) the only factor showing a negative trend was the Union industry's market share which was not sufficient to demonstrate that that material injury was imminent.

(1160) This claim is without merit. Contrary to NIO's claim, in the provisional Regulation, the Commission concluded that there was a threat of material injury for the Union industry which is clearly foreseeable and imminent based on all the elements explained in Section 5 of the provisional Regulation, and as confirmed by the present Regulation. Therefore, this claim was rejected.

5.4. **Conclusion**

(1161) The Commission therefore confirmed its conclusions on the existence of a threat of a clearly foreseeable and imminent injury to the Union industry at the end of the investigation period as set out in recitals (1167) to (1169) of the provisional Regulation.

6. **CAUSATION**

6.1. **Assessment**

(1162) In its provisional findings, the Commission distinguished and separated the effects of all known factors (imports from other third countries, export performance of the Union industry, demand related factors, competitiveness of the Union BEV industry, competition between ICE vehicles and BEVs, lack of economies of scales and start-ups, supply issues, EU policy on Biofuels, and imports from China by the Union industry) on the situation of the Union industry from the injurious effects of the subsidised imports. The Commission established that the effect of these other factors did not attenuate the causal link between the subsidised imports and the threat of injury, either individually or collectively.

(1163) Following the collection of the post-IP data following the imposition of provisional measures, the quarterly data regarding the production cost and sales prices of the Union producers in the fourth quarter of 2023 (outlined in Table 10 of this Regulation) shows that the profitability of the Union industry continued to deteriorate as explained in recital (961) of this Regulation, thus supporting the Commission's provisional findings.

(1164) The most recent import data based on registration (for 2023 Q4 – 2024 Q2) from China, showed a continue increase as stated in Table 7b and explained in recital (951) of this Regulation, with the imports of Chinese brands based on registration gaining a significant market share of 14,1 % in the second quarter of 2024 from 8,5 % in the last quarter covered by the investigation period (i.e. third quarter of 2023) as showed in Table 12 of this Regulation, and the Union producers continued to suffer due to the effects of unmitigated price suppression by Chinese exporting producers and the continuing market penetration, which prevented the Union producers from improving their profitability. Furthermore, in July 2024 SAIC had a very aggressive selling promotion in Germany where it gave to the consumer a discount of EUR 8 592 if the consumer bought an MG4 BEV in cash and, in the same time, concluded a leasing contract ([150]) for another MG4.

(1165) In light of the above and consistent with Section 6 of the provisional Regulation, the Commission confirmed its conclusion that the Chinese subsidised imports had a negative impact on the situation of the Union industry and were causing a threat of material injury to the Union industry while other factors did not attenuate such causal link, either individually or collectively.

6.2. **Interested parties' comments following provisional and definitive disclosures**

(1166) Comments following provisional disclosure were received from the GOC, the CCCME, Geely Group, SAIC Group Company 24 and NIO. SAIC Group generally disagreed with the Commission assessment without referring to any specific finding and without providing any further details, but merely referring to the submissions made by the CCCME, the GOC and other interested parties insofar as the comments in those submissions do not contradict SAIC Group's own arguments brought forward in other parts of the assessment.

(1167) Comments following definitive disclosure were received from the CCCME, the GOC and Company 24.

(1168) Company 24 made broad comments on causation of the threat of injury. These related to issues discussed below such as access to critical raw materials and batteries. Company 24 also quoted price pressure from ICE vehicles and the effect of the reduction or phasing out of consumer subsidisation programs of Member States. These comments did not contain new arguments and bearing in mind the detailed comments of CCCME and the GOC these comments are generally not repeated here. However, in respect of consumer subsidisation programs, the Commission notes that the reduction or phasing out of such programs only applies in certain Member States and would impact all companies selling BEVs on the Union market not just the Union industry.

6.2.1. *Effects of the subsidised imports*

(1169) Following provisional disclosure, the CCCME and the GOC reiterated several comments relating to the effects of the subsidised imports made in respect of the injury, threat of injury, price suppression and undercutting findings of the provisional Regulation. Such comments were rebutted in the appropriate section of this Regulation and will not therefore be repeated here.

([150]) https://www.autobild.de/artikel/carwow-mg4-electric-kostenlos-leasen-26258097.html.

(1170) The CCCME and the GOC reiterated that the Commission's analysis of the effects of the Chinese imports would be based on wrong conclusions on volume and price effects and threat of injury. According to these parties, the Commission did not examine whether there was a competitive overlap between Chinese imports and the sales made by the Union industry on the Union market and whether there was substitutability between them. They referred to the *Appellate Body in 'China – HP-SSST (Japan and EU)* ([151])'. Furthermore, they claimed the causation analysis was based on a conjecture of a further foreseeable increase of Chinese imports. They concluded that the analysis was thus insufficient and did not meet the legal standard set out in Article 15.5 of the SCM Agreement as well as Article 8(5) of the basic Regulation.

(1171) Regarding volume and price effects, the Commission addressed the claims made in Sections 4.4.1 and 4.4.2; the comments of these parties with regard to the threat of injury are addressed in Section 5 and the future likely increase of Chinese imports were addressed in recitals (1061) to (1097) of this Regulation. These claims were therefore rejected.

(1172) Following definitive disclosure, the CCCME and the GOC claimed that the gap between production costs and sales prices of the Union producers in the investigation period did not amount to price suppression.

(1173) The Commission noted that this simplistic comment misrepresented the Commission's findings on price suppression which are explained at Section 4.4.2 of the provisional Regulation. This analysis covers many more aspects such as price undercutting, the prices of the Chinese exporters, sales volumes and the profitability of the Union industry. This claim was therefore rejected.

(1174) The CCCME and the GOC further claimed that the post-IP data did not conclude that price suppression had continued.

(1175) The Commission pointed out there was no need to further examine price suppression in the post-IP period. An examination of the post-IP data did not show that the Union industry was improving. All the available data, especially that relating to increased sales of BEVs manufactured in China, pointed to a worsening situation for the Union industry rather than a better one. This claim was therefore rejected.

(1176) The CCCME and the GOC also claimed that the example quoted at recital (1164) of this Regulation relating to MG was not relevant to the findings of the case because it related to leasing.

(1177) The Commission rejected this claim as the example quoted was a meaningful example of the aggressive selling methods used by the Chinese exporting producers which provided continuing price pressure on the Union industry.

6.2.2. *Other factors*

6.2.2.1. Imports from third countries

(1178) In reply to a claim from the CCCME and the GOC stated in recital (730) of this Regulation, the Commission calculated the market share of the imports from all other third countries based on the actual consumption for the period considered as well, although it did not draw any conclusions based on such market shares.

([151]) Appellate Body Report, China – HP-SSST (Japan-EU), para 5.262.

Table 17a

Market share of imports from all other third countries based on actual consumption

		2020	2021	2022	Investigation period
South Korea	Market share	8,7 %	7,3 %	7,0 %	5,8 %
	Index	*100*	*84*	*80*	*67*
United Kingdom	Market share	5,5 %	2,6 %	4,1 %	2,7 %
	Index	*100*	*47*	*75*	*49*
Mexico	Market share	0 %	1,1 %	1,2 %	0,9 %
	Index	NA	*100*	*109*	*82*
Japan	Market share	2,0 %	3,5 %	0,7 %	0,8 %
	Index	*100*	*175*	*35*	*40*
USA	Market share	10,0 %	3,9 %	0 %	1,9 %
	Index	*100*	*39*	*0*	*19*
Other countries	Market share	0 %	0 %	0 %	0 %
	Index	*NA*	*NA*	*NA*	*NA*
Total of all countries except the PRC	Market share	26,1 %	18,4 %	12,3 %	12,0 %
	Index	*100*	*70*	*47*	*46*

(1179) The Commission also collected data for the fourth quarter of 2023 and the first quarter of 2024 (Q1 2024) on imports (volume and prices) of BEVs from third countries and their market share that are showed in Table 17b of this Regulation. The quarterly data for the investigation period is also presented in Table 17b of this Regulation to give context to the quarterly data post-IP.

Table 17b

Imports from third countries

Country		Investigation period				Post – IP		
		Q4 2022	Q1 2023	Q2 2023	Q3 2023	Q4 2023	Q1 2024	Q2 2024
South Korea	Quantity (pieces)	17 928	22 139	22 777	27 167	23 955	24 093	NA
	Index	*100*	*123*	*127*	*152*	*134*	*134*	*NA*
	Market share based on apparent consumption	4,2 %	5,9 %	5,3 %	6,5 %	5,5 %	6,7 %	NA
	Index	*100*	*141*	*125*	*153*	*132*	*159*	*NA*
	Market share based on actual consumption	4,9 %	5,9 %	6,0 %	6,5 %	5,5 %	4,8 %	4,4 %

Country		Investigation period				Post – IP		
		Q4 2022	Q1 2023	Q2 2023	Q3 2023	Q4 2023	Q1 2024	Q2 2024
	Index	*100*	*120*	*123*	*133*	*112*	*98*	*90*
	Average price (EUR/piece)	34 083	35 432	36 597	37 351	39 747	34 482	NA
	Index	*100*	*104*	*107*	*110*	*116*	*101*	*NA*
United Kingdom	Quantity (pieces)	18 542	23 528	18 457	16 828	20 128	9 813	NA
	Index	*100*	*127*	*100*	*91*	*109*	*53*	*NA*
	Market share based on apparent consumption	4,4 %	6,3 %	4,3 %	4,0 %	4,7 %	2,7 %	NA
	Index	*100*	*144*	*98*	*92*	*107*	*63*	*NA*
	Market share based on actual consumption	3,5 %	2,7 %	2,4 %	2,3 %	2,9 %	0,6 %	0,3 %
	Index	*100*	*76*	*68*	*67*	*82*	*18*	*9*
	Average price (EUR/piece)	26 943	25 448	25 992	26 958	27 454	26 496	NA
	Index	*100*	*94*	*96*	*100*	*102*	*98*	*NA*
Mexico	Quantity (pieces)	5 881	8 361	7 275	9 793	3 326	2 787	NA
	Index	*100*	*142*	*124*	*167*	*57*	*47*	*NA*
	Market share based on apparent consumption	1,4 %	2,2 %	1,7 %	2,3 %	0,8 %	0,8 %	NA
	Index	*100*	*162*	*121*	*169*	*56*	*56*	*NA*
	Market share based on actual consumption	1,0 %	0,8 %	0,9 %	0,9 %	0,9 %	0,9 %	0,9 %
	Index	*100*	*78*	*89*	*90*	*90*	*94*	*91*
	Average price (EUR/piece)	42 791	42 869	45 536	45 381	42 850	39 595	NA
	Index	*100*	*100*	*106*	*106*	*100*	*93*	*NA*
Japan	Quantity (pieces)	7 445	4 471	5 355	8 090	7 230	9 539	NA
	Index	*100*	*60*	*72*	*109*	*97*	*128*	*NA*

Country		Investigation period				Post – IP		
		Q4 2022	Q1 2023	Q2 2023	Q3 2023	Q4 2023	Q1 2024	Q2 2024
	Market share based on apparent consumption	1,8 %	1,2 %	1,2 %	1,9 %	1,7 %	2,7 %	NA
	Index	*100*	*68*	*71*	*110*	*96*	*151*	NA
	Market share based on actual consumption	0,8 %	1,5 %	1,7 %	1,6 %	1,2 %	1,9 %	1,6 %
	Index	*100*	*186*	*211*	*203*	*153*	*238*	*204*
	Average price (EUR/piece)	30 776	31 152	31 081	32 274	32 601	33 421	NA
	Index	*100*	*101*	*101*	*105*	*106*	*109*	NA
US	Quantity (pieces)	4 683	5 611	8 372	5 238	6 064	5 025	NA
	Index	*100*	*120*	*179*	*112*	*129*	*107*	NA
	Market share based on apparent consumption	1,1 %	1,5 %	1,9 %	1,2 %	1,4 %	1,4 %	NA
	Index	*100*	*136*	*175*	*113*	*127*	*127*	NA
	Market share based on actual consumption	0,9 %	2,2 %	2,5 %	2,0 %	2,3 %	1,3 %	1,0 %
	Index	*100*	*256*	*281*	*231*	*259*	*151*	*112*
	Average price (EUR/piece)	67 489	64 954	54 271	56 198	60 428	54 471	NA
	Index	*100*	*96*	*80*	*83*	*90*	*81*	NA
Other countries	Quantity (pieces)	525	350	435	142	137	139	NA
	Index	*100*	*67*	*83*	*27*	*26*	*26*	NA
	Market share based on apparent consumption	0,1 %	0,1 %	0,1 %	0,0 %	0,0 %	0,0 %	NA
	Index	*100*	*76*	*81*	*27*	*26*	*31*	NA

Country		Investigation period				Post – IP		
		Q4 2022	Q1 2023	Q2 2023	Q3 2023	Q4 2023	Q1 2024	Q2 2024
	Market share based on actual consumption	2,0 %	0 %	0 %	0 %	0,6 %	0,8 %	0,8 %
	Index	*100*	*0*	*0*	*2*	*30*	*40*	*40*
	Average price (EUR/piece)	34 409	38 407	40 717	57 159	38 287	52 596	NA
	Index	*100*	*112*	*118*	*166*	*111*	*152*	NA
Total of all countries except the PRC	Quantity (pieces)	55 004	64 460	62 671	67 258	60 840	51 396	NA
	Index	*100*	*117*	*114*	*122*	*111*	*93*	NA
	Market share based on apparent consumption	12,9 %	17,3 %	14,5 %	16,0 %	14,1 %	14,3 %	NA
	Index	*100*	*133*	*112*	*124*	*109*	*110*	NA
	Market share based on actual consumption	13,1 %	9,9 %	11,3 %	13,4 %	13,3 %	10,4 %	9,0 %
	Index	*100*	*76*	*87*	*103*	*102*	*74*	*63*
	Average price (EUR/piece)	35 007	35 042	36 430	36 819	34 893	32 762	NA
	Index	*100*	*100*	*104*	*105*	*100*	*94*	NA

Source: Member States customs data.

(1180) Imports from South Korea decreased in the two quarters post-IP as compared to the last quarter covered by the investigation period. Their market share slightly increased in the first quarter of 2024 to the last quarter covered by the investigation period. In the first quarter post-IP, the average import price from South Korea was higher than the selling prices of the Union industry as shown in Table 10 of this Regulation and above the average import prices from China in both quarters post-IP as shown in Table 8 of this Regulation.

(1181) The imports from the United Kingdom decreased in the first quarter of 2024 reaching a market share of 2,7 %. In the first quarter post-IP, the average import price from the United Kingdom was lower than the selling prices of the Union industry as shown in Table 10 of this Regulation but above the average import prices from China in both quarters post-IP as shown in Table 8 of this Regulation.

(1182) The imports from Mexico decreased in the two quarters post-IP reaching only 0,8 % market share.

(1183) The imports from Japan increased in the second quarter post-IP reaching 2,7 % market share. The average import price from Japan was above the average price of the Union industry in the first quarter post-IP and above average import prices from China in both quarters post-IP.

(1184) The imports from the US slightly increased post-IP reaching 1,4 % market share in both quarters post-IP. The average import price was significantly higher than the average price of the Union industry in the first quarter post-IP and significantly higher than the average import price from China in both quarters post-IP.

(1185) Imports from all other countries remained negligible post-IP.

(1186) Following provisional disclosure, the CCCME and the GOC claimed that the Commission did not properly assess imports from third countries in its causation analysis. Firstly, as already set out in recital (724) of this Regulation, the CCCME and the GOC claimed that the Commission should have calculated market shares of all import sources on the same basis, i.e. on the apparent consumption.

(1187) This is in fact what the Commission did as imports from third countries were examined on an apparent consumption basis (Table 17b) and Chinese imports were examined on the same basis at Table 2a of the provisional Regulation. In addition, the rapid rise in Chinese imports as shown at Table 2b (using actual consumption) shows a very similar trend than the one shown in Table 2a of the provisional Regulation. Therefore, this claim was rejected.

(1188) The CCCME and the GOC further claimed that imports from South Korea and the UK were not properly assessed as (i) between 2022 and the investigation period, the import volumes from South Korea and the UK alone increased more than the imports from China during the same period; (ii) import prices from the UK were comparable to the import prices of Chinese imports and were consistently lower than those of the Union industry and below the unit costs of the Union industry during the period considered; (iii) import volumes of South Korea increased and were close to import volumes from China during the investigation period, while import prices were below the Union producers production cost.

(1189) The above arguments could not devaluate the findings of the Commission in recitals (1178) and (1179) of the provisional Regulation. Concerning point (i), the Commission noted that the increase of import volumes of South Korea and the UK during 2022 and the investigation period remained significantly below the increase in import volumes from China, in contrast to what was stated by the interested parties concerned. As to point (ii), and as noted in recital (1179) of the provisional Regulation, although average import prices were slightly below the average import price from China during 2020 and 2022, there were above the average Chinese import price in 2021 and the investigation period. In addition, although there was an overall downward trend of the average import price from the UK (-4 %), it was less pronounced than for Chinese imports (-10 %). Finally, the market share of the UK imports only increased by 0,5 percentage points between 2022 and the investigation period (and overall in the period considered by 1,1 percentage points), while the Chinese market share increased by 2,7 percentage points (and overall during the period considered by 21,1 percentage points). Regarding point (iii), concerning imports from South Korea, as noted in recital (1178) of the provisional Regulation, their market share fell from 10,2 % in 2020 to 5,5 % in the investigation period, while import prices showed an increasing trend and were on average above the Chinese import price. These claims were therefore rejected.

(1190) The CCCME and GOC also claimed that the Commission failed to analyse the impact of the imports from all third countries cumulatively and that these were likely having a negative effect on the injurious situation of the Union industry.

(1191) The Commission noted that it was unclear what point of law was being raised by the CCCME and the GOC, since the Commission did not conclude, in the provisional Regulation, that the Union industry was materially injured during the investigation period. Furthermore, when considering imports of all other third countries cumulatively, the Commission noted that their market share showed a decreasing trend between 2020 and the investigation period, i.e. from 27,3 % to 15,1 % (albeit slightly increasing by 1,8 percentage points from 2022 to the investigation period). Their average import price showed an increasing trend throughout the period considered (+ 23 %) and was significantly above the average import price of Chinese imports during the investigation period. Therefore, these claims were rejected.

(1192) Following definitive disclosure, the CCCME and the GOC claimed that the Commission failed to properly separate and distinguish the impact of third country imports on the Union industry from the effects of the allegedly subsidized imports from China. In particular, the CCCME claimed that the Commission failed to separate and distinguish the cumulative impact of all other third country imports on the economic situation of the Union industry. In this regard, the CCCME claimed that (i) the comparison between import price from China and import prices from all other third countries was not objective as the import prices from China were transfer prices, (ii) the Commission dismissed the significance of the cumulative impact of the imports of all other third countries on the ground that there was a decreasing trend of all other third country imports' market share between 2020 and the investigation period while the data provided in Table 17 of this Regulation showed that the market share of the imports of all other third countries increased on a quarterly basis between the fourth quarter of 2022 and third quarter of 2023, which coincided with the deteriorating market share and profitability of the Union producers (in the third quarter of 2023, when the Union industry's profitability was – 20,5 %, the Chinese market share in that quarter was stable, but the third country imports had a 16 % market share), (iii) as compared to the beginning of the investigation period, the post-IP data confirmed the continuation of the increasing trend of the imports from all other third countries, (iv) in the first quarter of 2024, the market share of the imports of all other third countries reached 14,3 % which was much higher than the Chinese brand BEV imports' market share of 10,4 %, (v) compared to the beginning of the investigation period, the post-IP data showed that average prices of all other third country imports decreased by 6 % and were following a decreasing trend, (vi) given their increasing market share and decreasing prices, all other third country imports were likely to have exerted downward pricing pressure on the Union industry, and gained market share at the expense of the Union industry, (vii) the market share of the most important source of imports after China, i.e. imports from South Korea, increased by 59 % between the beginning of the investigation period and the first quarter of 2024, imports from South Korea held a 6 % market share, while Chinese brand BEV imports accounted for 7,3 % in the investigation period and therefore given their comparable market presence, the Commission should have devoted more attention to analysing the injurious effects of the South Korean imports.

(1193) Concerning point (i), the Commission noted that based on the models of BEVs imported from other third countries, it cannot be excluded that the prices of the imports from third countries were also transfer prices as well and therefore the comparison of import prices was objective.

(1194) Concerning point (ii), the points raised by CCCME and the GOC did not explain or substantiate how they would impact the causation between the subsidized imports and the threat of injury. The investigation did not reveal that the imports from third countries are posing a threat to the Union industry nor did the CCCME and the GOC submit such information. Furthermore, even if the market share of the Chinese imports was 'stable' in the third quarter of 2023, when the Union industry's profitability was – 20,5 %, the market share of the Chinese imports was higher than the market share of the imports of all other third countries (21 % versus 16 %), while Chinese imports prices (EUR 23 887) were lower than the import prices of the all other third countries (EUR 36 819). Therefore, this claim was rejected.

(1195) Concerning point (iii) the Commission disagreed with this simplistic assessment. In the same line the Commission could have argued that as compared with the other three quarters of the investigation period, the total volume of imports from other third countries post-IP was decreasing. Therefore, this claim was rejected.

(1196) Concerning point (iv) the claim is without merit as the CCCME should have compared the market share of all other third country imports with the total imports from China which was 25,4 % and thus higher than the market share of the imports from all other third countries.

(1197) Concerning point (v), as it was explained in recitals (1021) and (1076) of the provisional Regulation, the weighted average prices were affected by the product mix and therefore any decrease or increase in average prices should be seen in relation with a change in the product mix. This is valid for Chinese import prices, Union selling prices as well as the import prices from other third countries. It is recalled that the Chinese import prices also decreased by 8 % in the first quarter of 2024 as compared with the last quarter of 2022.

(1198) Concerning point (vi), the Commission disagreed with this claim as the market share of the imports from third countries were actually fluctuating on a quarterly basis and there was no clear increasing trend, was below the market share of the imports from China and while the import prices were decreasing, also the import price from China was decreasing and was lower than the import prices from other third countries.

(1199) Concerning point (vii) the market share of the imports from South Korea fluctuated on a quarterly basis as showed in Table 17b of this Regulation and they were below the market share of all imports from China, and even below the market share of the Chinese BEVs. There was no evidence in the file that the imports from South Korea were a threat to the Union industry nor did the CCCME submit such evidence. Furthermore, the average import price from South Korea was higher than the selling price of the Union industry on a quarterly basis (see Table 10 and 17 of this Regulation). Therefore, this claim was rejected.

(1200) Therefore, based on the above, the Commission concluded that the imports from other third countries do not contribute to the threat of injury to the Union industry.

6.2.2.2. Competitiveness of the Union BEV industry

(1201) Following provisional disclosure, the CCCME and the GOC reiterated their claim set out in recital (1197) of the provisional Regulation that the Union BEVs industry was not competitive due to the lack of vertical integration and argued that its claim was not appropriately addressed in the provisional Regulation. In this regard they argued that the Commission had wrongly broken down the claim in different sub-factors and thus 'side-stepped' the issue. The CCCME and the GOC argued that all factors (such as supply chain disruptions, higher raw material costs, etc.) have to be seen in its entirety and reiterated that the lack of vertical integration results in higher costs for purchasing batteries and other critical components and that it made the producers more vulnerable to supply chain disruptions, which in turn also increases fixed costs due to lower production volumes, which cannot be looked at separately. They also asserted that Geely and SAIC groups were vertically integrated producers, in contrast to the Commission's statement in recital (1198) of the provisional Regulation.

(1202) Regarding the claim that Commission broke down the parties' claims on the 'competitiveness of the industry' in sub-factors, the CCCME and GOC failed to explain to what extent this could have side-tracked the issue. The Commission therefore maintains the view that its approach to assess the information on file regarding alleged inefficiencies and competitiveness of the Union industry was sufficient and fair. Regarding the claim that also Geely Group and SAIC were vertically integrated, as explained in recital (692) of the provisional Regulation, the investigation revealed that the BYD Group was the only vertically integrated sampled BEV exporting producer producing LFP batteries for BEVs. Furthermore, in recital (694) of the provisional Regulation, the investigation revealed that the other two groups (SAIC and Geely) sourced their batteries from unrelated and related suppliers, as well as from joint ventures with Contemporary Amperex Technology Company Limited ('CATL'). Therefore, the claim was rejected.

(1203) Following definitive disclosure, the CCCME and the GOC reiterated the claim that the lack of competitiveness of the Union industry had to be assessed holistically because these factors (lack of vertical integration, high production costs on account of high battery, fixed and labour costs among others and supply chain disruptions) are interlinked and work in conjunction. The CCCME and the GOC further argued that the lack of vertical integration and the fact of buying batteries and raw materials from unrelated producers not only added to the production costs directly but also limited the ability of the Union producers to increase production and sales and furthermore, make the Union industry more susceptible to supply chain disruptions which affected the cost and production.

(1204) The Commission disagreed with this claim noting that it was unsubstantiated and refuted by market reality. The Commission considered that while there can be benefits to vertical integration, there can be benefits also to focusing on specific parts of the value chain and sourcing other inputs from specialised companies. This is also because such specialised companies can realise efficiencies of scale and scope, and pass them on to their

customers. The question of which benefits are higher (so-called 'make-or-buy' decision in industrial economics) is one of the most complex issues faced by manufacturing companies and the answer can be company, product, model, and component specific. The CCCME and the GOC did not explain which were the unique characteristics of the BEV industry, which were absent in other industries, and which make full vertical integration a necessity for survival. In view of this, if the CCCME and the GOC arguments were correct, only vertically integrated companies would survive in any industry, having superior efficiency and competitiveness, while all others would exit the market. The reality is that in most, if not all, industries, including the BEV industry and even the Chinese BEV industry, there is significant variation in the level of vertical integration of successful companies. As an example, Tesla, the world's biggest BEV manufacturer, has relied and continues to rely on external companies for the supply of its batteries ([152]) ([153]) ([154]). Therefore, the CCCME arguments were rejected.

(1205) Following provisional disclosure, the CCCME and the GOC claimed further that the investments in battery production by certain Union BEVs producers would not compensate for the lack of competitiveness. They argued that even if the BEVs producers in the Union increased their battery production capacity, they would remain dependent on imports of raw materials for the battery production, that is nickel, lithium and cobalt, as well as other components for batteries. In this regard, they referred to various public sources (such as the Special Report of the European Court of Auditors 15/2023 ([155]) and the Transport & Environment Report ([156]), etc.). Furthermore, these parties claimed that the Commission's conclusions in recital (1199) of the provisional Regulation, that the Chinese advantages in the supply of batteries and key raw materials, were not supported by evidence and ignores that also the Union industry receives subsidies for their investments in the battery production.

(1206) Regarding access to raw materials and components, the Commission did not contest that such factors were advantages of the Chinese producers. However, such advantages were built up by subsidisation as explained at Section 3.7.2 of the provisional Regulation. In fact, Section 3.7.2 of provisional Regulation provides comprehensive evidence of the degree of subsidisation involved in raw material and component supply in China. Therefore, the Commission maintains its view that such advantages relate to unfair trade rather than normal competitive advantages. In addition, as set out in recital (851) of this Regulation, the Commission considered that the CCCME and the GOC failed to show that access to raw materials imposes a significant and actual constraint on the Union BEV production capacity and noted that the CCCME and the GOC has not even attempted to quantify such constraint. Regarding the fact that the Union BEVs industry has also received EU or national subsidies, the Commission notes that not all subsidies are countervailable and the CCCME and the GOC did not provide evidence that the subsidies received by the Union industry for batteries were countervailable and caused injury to the Chinese industry. Therefore, the claims were rejected.

(1207) The CCCME and the GOC referring to recital (1200) of the provisional Regulation, claimed that it was irrelevant in the causality analysis, whether supply chain disruptions and other factors increasing the raw material costs where worldwide issues and did therefore not only affect the Union producers only, as the effect of these factors on the Union industry's situation has to be assessed. Geely Group also claimed that in 2022 and 2023 raw material prices for the production of batteries (cobalt, lithium and nickel) were exceptionally high. In addition, there was also a high inflation level in the Union (8,83 % in 2022 and 6,29 % in 2023), whereas in China inflation was much less during that same period (1,96 % and 0,24 % respectively) and therefore, the Chinese exporting producers were not affected in the same way from these factors and the Commission's conclusions in this regard would be flawed.

([152]) https://cnevpost.com/2023/06/29/tesla-to-equip-revamped-model-3-catl-m3p-battery-report/
([153]) https://asia.nikkei.com/Business/Automobiles/Tesla-relies-on-China-for-40-of-battery-supply-chain-analysis/
([154]) https://news.az/news/tesla-supplier-panasonic-energy-set-to-launch-mass-production-of-high-capacity-ev-batteries.
([155]) European Court of Auditors, 'Special Report 15/2023: The EU's industrial policy on batteries', 19 June 2023.
([156]) Transport & Environment, 'Strike a balance: Trade agreements for resilient and responsible supply chains', 25 June 2023.

(1208) The Commission noted that recital (1200) of the provisional Regulation addressed the claim that the Union industry would have a competitive disadvantage. For the reasons set out in this recital, the Commission concluded that the factors mentioned by the CCCME and the GOC did not constitute a specific disadvantage to the Union industry, which as such was not contested by the CCCME and the GOC.

(1209) Regarding Geely Group's claim that the Union producers were more affected by the inflation rates in 2022 and 2023 than the Chinese exporting producers, this as such could not have explained the substantial increase of subsidised imports undercutting substantially the Union industries sales prices. According to the public source referred to by Geely Group, the difference in the inflation rates were 6,87 percentage points in 2022 and 6,06 percentage points in 2023 which compares to an undercutting margin established during the IP of 12,7 % on average as set out in recital (1029) of the provisional Regulation. Therefore, these claims were rejected.

(1210) The CCCME and GOC further argued that the fact that the Union industry was not vertically integrated made them even more vulnerable to supply chain disruptions which resulted in the inability of the Union producers to increase its production which in turn resulted in higher fixed costs. They provided several examples where Union producers were forced to suspend, slow-down or even stop production and referred to public statements of other Union producers acknowledging that supply chains were a core risk to the BEVs industry. These parties also reiterated that other factors such as high energy costs, high labour costs and high costs of components other than batteries had a negative effect on the competitiveness of the Union industry.

(1211) Finally, the CCCME and GOC argued that a further negative impact on the Union industry's competitiveness would be several closures and strikes and provided a few press articles in this regard. In this regard, the CCCME and GOC claimed that the Commission disregarded several public statements from Union BEVs industry's executives and representative organisations affirming the lack of competitiveness of the Union industry.

(1212) During the investigation, the Commission was able to establish the causes of the higher costs on the basis of the information provided by the sampled Union industry companies. The main issues which caused increases in costs were reported at recital (1078) of the provisional Regulation, although the development of unit costs for BEVs is made more complex by changes in product mix and the transition from ICE vehicles to BEVs. The cost of raw materials and components (including batteries) and energy peaked in 2022 and subsequently, the cost of most like-for-like raw materials and batteries actually fell in the investigation period. Therefore, it has not been substantiated how the development of such costs could have had an impact on the cause of the threat of injury.

(1213) As concerns the temporary plant closures, it should be noted that just because sometimes plants have to be temporarily stopped because of unexpected lack of certain raw materials or sometimes due to global issues (covid 19, Israel-Hamas conflict, Houthi attacks on shipping vessels in the Red Sea etc.) does not make the Union industry less competitive, but it shows the complex environment the Union industry operates in.

(1214) Therefore, although the increase in unit costs was caused by many factors, including supply disruptions and, to a certain extent, increased raw material and component costs, this does not attenuate the impact of subsidised imports on the Union industry.

(1215) In addition, it was unclear what point of law was being raised by the CCCME and the GOC, since the Commission did not conclude in the provisional Regulation that the Union industry was materially injured during the investigation period. As explained at Section 6.2.4 of the provisional Regulation, the alleged inefficiencies of the Union industry as explained by interested parties, are not an important factor to the causation of the threat of injury analysis. The CCCME and the GOC did not, therefore, substantiate the relevance of their claims. Such claims were therefore rejected.

6.2.2.3. Imports from China by the Union industry

(1216) Following provisional disclosure, the CCCME, the GOC and Company 24 claimed that the Commission did not properly assess the imports of Union OEMs (so called 'self-imports') in its causation analysis. This claim was also reiterated following definitive disclosure. The CCCME and the GOC claimed that the Commission should analyse the competition between these self-imports on the one hand, and BEVs produced in the Union on the other hand and that self-imports should be examined as a distinct causation factor. Company 24 asserted that the exports of companies related to the Union OEM producers would not be the 'real target' of this investigation and that this fact would have been recognised by the Commission as it provided a break-down of imports per type of exporting producers in the provisional Regulation. They claimed that the Commission should not have analysed whether the exports of Chinese OEM producers unrelated to the Union OEM producers were likely to increase more than of those imports from companies related to Union OEM producers, but rather whether imports of Chinese OEM producers unrelated to Union producers place the Union industry in a situation of 'vulnerability' and 'will cause material injury to the Union industry if no trade defence measure is taken'.

(1217) Finally, the CCCME and the GOC also claimed that there was no evidence that the Chinese brand BEV import volumes have put or could put pressure on the Union BEV industry sales and that the Chinese BEV brands took market share from the Union BEV industry as (i) the loss of the Union industry's market share in the Union coincided with the increase in their own imports from China, (ii) the Union industry's market sales plus the market share of the Union industry's self-imports sold in the Union showed that the Union industry gained 8,6 % market share and did not lose market share in the period considered.

(1218) Although this claim was made by the CCCME and the GOC in the section 'threat of injury', the Commission considered it more appropriate to rebut it under this section.

(1219) The Commission has performed an analysis of the so-called self-imports in recitals (1212) to (1214) of the provisional Regulation and indeed provided a breakdown of the market share of imports of (i) Chinese exporting producers related to the Union ICE OEMs transitioning to production of BEVs, (ii) Tesla and (iii) all other Chinese imports in Tables 12a and 12b of the provisional Regulation under recitals (1132) and (1134) respectively. This analysis should be considered together with Table 13 of this Regulation. Firstly, the legal standard on causation requires that all imports originating in the country concerned should be assessed collectively. This is in fact what the Commission has done in Section 6.1 of the provisional Regulation. Additionally, the Commission, as mentioned above, has broken down Chinese imports, using, inter alia, Tables 12a and 12b of the provisional Regulation and Table 13 above, in order to determine developments in the profile of Chinese imports. The Commission concluded that imports of Chinese brands were increasing in importance and that sales on the Union market were set to increase, due to the availability of stocks and announcements made concerning the increase of imports on the Union market in the post-IP and beyond in the coming years. This conclusion was also confirmed by the post-IP data that showed that the imports of Chinese brands significantly increased to 14,1 % in the second quarter of 2024, while all the other imports from China decreased as shown in Table 10 of this Regulation. Thus, the Commission properly carried out an analysis of the so-called self-imports and concluded that those imports were not likely to contribute to the threat of material injury.

(1220) Regarding the specific claim of Company 24, the Commission reiterated that the scope of the current investigation is all BEVs originating in China and that therefore the statement that it did not target imports from companies related to Union BEVs producers was incorrect. It is also incorrect to state that the break-down in Tables 12a and 12b of the provisional Regulation would confirm this assumption. The break-down in Tables 12a and 12b, as stated in recital (1131) of the provisional Regulation addressed a specific claim of the CCCME in this regard as described in recital (1130) of the provisional Regulation. This claim was therefore rejected.

(1221) Following definitive disclosure, the CCCME and the GOC claimed that Union BEV industry producers were continuing to shift production to China, with the consequence that it could not be excluded that self-imports could/would increase. They referred to a press article on 30 July 2024 whereby Stellantis announced that Leapmotor International, a joint venture between Stellantis and Chinese producer Leapmotor, shipped the first batch of Leapmotor EVs from China to Europe ([157]).

(1222) The Commission noted that this article referred to export from China of the models C10 SUVs and T03 which are Leapmotors brands, thus Chinese brands and therefore there was no shift of production from the Union to China as the CCCME suggested. This only shows that the imports of BEVs from China will increase in the imminent future.

(1223) All claims that imports from the Union industry had not been properly considered as a causation of the threat of injury were therefore rejected.

6.2.2.4. Intra-Union industry competition

(1224) Following provisional disclosure, the CCCME and the GOC submitted that there was a strong intra-Union industry competition which was likely to have negatively affected Union BEV producers, accentuated by incentives such as the French EV eco-bonus and prevented price increases by the Union industry. They claimed that this factor should have been assessed by the Commission. This only evidence provided by the CCCME and the GOC in this regard was several press articles that talk about normal competition that exists on any market where several producers operate ([158]).

(1225) The Commission considered that such competition was based on the principles of fair trade and did not attenuate the effect of the subsidised competition of Chinese imports at prices that were significantly undercutting the Union BEVs producers' prices. This claim was therefore rejected.

(1226) Following definitive disclosure, the CCCME and the GOC claimed that there was no indication in the file that the Commission considered any evidence to reach its conclusion concerning the fair competition between Union producers.

(1227) The Commission noted that the CCCME and the GOC did not submit any additional evidence about how intra-Union industry competition was having or could have a negative effect on the Union producers. In any event, the purpose of the investigation is to assess whether the imports of BEVs from China are subsidised, are threating the Union industry and if it is in the Union interest to impose countervailing measures if the legal conditions are met. The investigation found that for the Union industry, its deteriorating situation is the result the unfair outside competition from subsidised Chinese imports that threaten it with material injury. This investigation does not assess the competition between the Union producers on the Union market as the findings concern the Union industry as a whole. The CCCME and the GOC did not submit any evidence that the intra-Union industry competition is attenuating the link between the subsidised imports from China and the threat of injury. Therefore, the claim was rejected.

6.2.2.5. Overregulation

(1228) Following provisional disclosure, the CCCME and the GOC also submitted that the regulatory burden in the Union affected the Union BEV industry negatively, notably because compliance requires considerable financial resources. The CCCME and the GOC quoted several statements of Union executives as evidence of their claim. This claim was also reiterated by the CCCME after the definitive disclosure.

([157]) https://www.stellantis.com/en/news/press-releases/2024/july/leapmotor-international-ships-the-first-batch-of-leapmotor-electric-vehicles-from-china-to-europe-this-month.

([158]) https://europe.autonews.com/automakers/bmw-ev-sales-surge-while-mercedes-and-audi-struggle and https://electrek.co/2024/07/10/bmw-outpaces-luxury-rivals-porsche-audi-ev-sales-spike-q2/

(1229) This claim was very generic. The Commission considered that any increases in cost due to regulatory issues would have affected the Union industry's investment decisions in the past. No evidence was provided that this issue would be a threat of injury to the Union industry in the years following the investigation period. Whilst the transition to electrification is required by law, this in itself does not pose a threat to the Union industry within the meaning of Article 8(8) of the basic Regulation, as like any industry, the BEV's producers must adapt to the existing regulatory framework. In fact, the regulatory framework constitutes the framework in which the assessment of the threat of injury within the meaning of Article 8(8) of the basic Regulation is carried out. Furthermore, whilst compliance with various regulations continues post-IP, the CCCME and the GOC did not identify any new important regulations that threatens to cause injury to the Union industry within the meaning of Article 8(8) of the basic Regulation. Rather, the Commission established that it is the subsidised imports which threatens the viability of the Union BEVs industry. Without fair market conditions, the Union producers will not be able to reach the necessary economies of scale Therefore, this claim was not substantiated and was rejected.

6.2.2.6. Industry in transition

(1230) Following provisional disclosure, the CCCME and the GOC further claimed that the Commission had not properly assessed the impact of the transition from ICE to BEVs on the threat of injury. They argued that this fact will have an impact on the Union producers in the foreseeable future.

(1231) The CCCME and the GOC also claimed that the Commission brushed aside the positive trends for most of the injury indicators while blaming the Chinese BEV imports for the situation of the Union industry without any proper assessment of the transition in question. Moreover, the Commission only evoked the transition but did not consider objectively the impact of it on the costs and profits of the Union industry as well as its ability to raise prices. Thus, this transition was considered only as a factor favouring the Union industry but was not taken into account when assessing the impact of the Chinese BEV imports. This claim was also reiterated by the CCCME and the GOC following definitive disclosure.

(1232) These comments ignore and misrepresent the Commission's analysis of the situation of the Union industry at Section 4 of the provisional Regulation. The Commission's analysis recognised that some indicators were positive in the investigation period. Therefore, such indicators were not 'brushed aside'. More accurately, they were placed in their proper context of the transition from ICE vehicles to BEVs, and they were considered, together with all other relevant factors, such as the loss-making situation and the price pressure of increasing quantities of subsidised imports from China, in particular during the investigation period and the potential likely increase afterwards.

(1233) The transition from ICE vehicles to BEVs forms key background context to the whole threat of injury, causation and Union interest analysis. This transition is ongoing and is planned to continue up to 2035. The transition is a key part of the Commission's Green Deal in order to meet CO_2 emission targets. Union producers have developed detailed strategies, involving the implementation of massive investment plans, in order to comply with the relevant legislation to meet these targets. The transition is therefore essential to the future of the Union industry.

(1234) Furthermore, the transition of the Union market from ICE vehicles to BEVs is part of the regulatory framework of the auto industry in the Union. The Union vehicles producers must comply with this regulatory framework as well as other legislations. Such regulatory framework cannot be considered to cause threat of injury within the meaning of Article 8(8) of the basic Regulation. On the contrary, it constitutes the framework in which the assessment of the threat of injury within the meaning of Article 8(8) of the basic Regulation is carried out. In fact, the imminent threat to the Union industry is not the transition itself, but the subsidised Chinese imports which threaten the achievement of the transition process. Therefore, this claim was rejected.

6.2.2.7. Overcapacity of the Union industry

(1235) Following provisional disclosure, the CCCME and the GOC submitted that the Union industry was burdened by overcapacity based on the figures established at Table 4 of the provisional Regulation. This claim was reiterated by the CCCME and the GOC following definitive disclosure by further claiming that the Commission had not provided any evidence in support of its view that spare capacity was available for the production of ICE vehicles.

(1236) The Commission, as set out in recital (842) of this Regulation, noted that data on production capacity was estimated based on the sampled Union producers and underlines that, in a growing market, capacity has to be installed before production increases can be realised. The available spare capacity is largely theoretical because of the transition from ICE vehicles to BEVs, meaning that the capacity not used for BEV production as planned, would be available to produce ICE vehicles, rather than remaining unutilised. Furthermore, as stated in recital (1058) of the provisional Regulation, some Union producers were producing BEVs in their assembly plants alongside ICE vehicles using essentially the same production process in order to leverage existing assets, processes and competencies and provide volume flexibility. The Commission discussed the calculation of capacity with the sampled Union producers during the on-spot verification visits. Moreover, as already set out in recital (844) of this Regulation, the high spare capacity of the Union industry is in line with the transition of the Union market from ICE vehicles to BEVs. This claim was therefore rejected.

6.2.2.8. Investment decisions of the Union BEVs industry

(1237) Following provisional disclosure, the GOC and the CCCME claimed that the Commission did not consider the fact that Chinese producers innovated for years and are now highly efficient, in contrast to Union producers which, in spite of their belated shift to BEVs, received subsidies from the Union and its Member States. Although this claim was made in the 'Union interest' section of their comments, the Commission considered it more appropriate to rebut it under this section. Similarly, NIO claimed that the Union BEVs industry carried out wrong investment decisions in the past, whereas it only started its switch to electric vehicles technology recently and therefore has shown a lack of long-term planning in contrast to the Chinese BEVs industry that had a negative effect on their situation.

(1238) The Commission failed to understand the relevance of this comparison. The fact that Chinese producers may have innovated or may be efficient does not nullify the findings of threat of injury or the causation findings. Therefore, this claim was rejected.

6.3. **Conclusion**

(1239) Based on the above definitive findings, the conclusion reached in recital (1218) of the provisional Regulation was confirmed.

7. **UNION INTEREST**

(1240) Following provisional disclosure, comments on Union interest were received from the GOC, the CCCME, the CAAM, SAIC Group, Geely Group, NIO, Company 18, Company 24, Company 27 and VDA.

(1241) Following definitive disclosure, comments on Union interest were received from the GOC, the CCCME, the CAAM, Geely Group, Company 22, Company 24, Company 27, Polestar, VDA and Eurofer.

7.1. **Interest of the Union industry**

(1242) Following provisional disclosure, the GOC and the CCCME claimed that the Commission did not address several public statements of, inter alia, Union producers, their associations and several Member States showing the positive performance of Union producers and their opposition to countervailing measures. In particular, the GOC and CCCME pointed to the launch of new models by the Union producers, as evidence of the fact that Union producers were able to make the required investments, and on the Union industry's investments in production in third-country markets, as evidence of the fact that the Union producers will be able to follow the transition of the Union market from the production of ICE cars to BEVs.

(1243) As a preliminary point, the Commission noted that it based its findings on the factual evidence collected during this investigation. The Commission only addressed the claims made in the context of this investigation. Moreover, the Commission itself noted in recital (1047) of the provisional Regulation that Union producers were expanding their portfolio of offered BEVs every year with new launches and recalled in recital (1092) of the provisional Regulation some of the Union producers' planned investments. However, while these launches and investments were announced, these are significantly threatened should measures not be imposed as outlined in recital (1228) of the provisional Regulation and the Union industry may not be able to realise these projects in the future as announced. Finally, the Union interest analysis includes an evaluation of the impact of the measures on, inter alia, the Union producers in the Union market and does not analyse the performance of the Union industry in third-country markets. Therefore, these claims were rejected.

(1244) Following definitive disclosure, the GOC and the CCCME reiterated these public statements and additional ones, without further arguments.

(1245) Therefore, the Commission considered that it was not needed to address them further.

(1246) Following definitive disclosure, VDA considered that the risk for the Union industry's investments should measures not be imposed was outweighed by other prevailing risks, such as the loss of access to important foreign markets such as China or other markets which also raise tariffs on BEVs. Furthermore, VDA claimed that investments in the ramp-up of e-mobility and battery production were supported by Chinese investors and raw materials were still needed from China.

(1247) The Commission addressed the relevance of the Union industry's access to export markets in the context of the investigation in recital (1310) of this Regulation and the need for raw materials from China in recital (1293) of this Regulation. The same could be applied to support from Chinese investors in the Union as the measures are not meant to hamper investment inflows from China. Overall, VDA compared risks on which the imposition of the measures has no direct impact, with the only risk amongst those – the loss of investments already carried out and planned in the Union – that the countervailing measures can directly mitigate. The Commission therefore disagreed with the outcome of the balancing exercise of VDA and rejected this claim.

(1248) Following provisional disclosure, the GOC and the CCCME also referred to Company 24's arguments opposing the measures which, in their opinion, were dismissed by the Commission without proper consideration.

(1249) The Commission noted that it addressed Company 24's arguments on Union interest in recitals (1250) to (1251), (1255) to (1258), and (1266) to (1267) of the provisional Regulation, and that Company 24 itself, in its comments on provisional disclosure, did not claim that its arguments on Union interest were not appropriately addressed by the Commission. Thus, this claim was rejected.

(1250) Furthermore, the GOC and the CCCME claimed that the imposition of the measures will not benefit the Union industry because the Union producers import the majority of the Chinese BEVs in terms of volume, and public announcements do not show that this situation will change. They were specifically referring to public information on BMW importing Mini BEVs from China as of 2024, to agreements between Volkswagen and SAIC Group to develop electric vehicles together, and to a joint venture between Stellantis and Leapmotor to sell Leapmotor's BEVs in the Union. According to them, the Commission did not consider this aspect, also by not addressing imports by Tesla and by stating the Union OEMs' imports will not increase in recital (1136) of the provisional Regulation.

(1251) The Commission noted that, in contrast to what was claimed, it addressed the imports by Tesla in recital (1137) of the provisional Regulation, by concluding that they are not expected to increase significantly in the future as their spare capacities were very low, if any. Likewise, the Commission addressed in Table 12b and recital (1135) of the provisional Regulation, that in the last quarter of the investigation period imports of Chinese brands overcame imports by Union OEMs. This latest development is in sharp contrast to the public announcements made by the Chinese exporting producers that significant imports were made by Union OEMs. In addition, the Union OEMs

did not announce any major plans to import BEVs from China, as noted in recital (1136) of the provisional Regulation. Public statements reported by the GOC and the CCCME did not contradict these conclusions. Thus, BMW's imports under the Mini brand had already been considered in recital (1136) of the provisional Regulation. Also, there was no indication that the agreement between Volkswagen and SAIC was meant for exports to the Union and the source the CCCME and GOC relied on for the sale of Leapmotor's BEVs by Stellantis reported that 'Stellantis and Leapmotor, an EV startup, did not provide details on where the electric vehicles would be produced' ([159]). This trend is further confirmed by the breakdown of imports in the post-IP period as shown at Table 13, which demonstrates that the imports of Chinese brands increased significantly to 14 % in the second quarter of 2024, while all the other imports decreased. Therefore, this claim was rejected.

(1252) Following definitive disclosure, the GOC and the CCCME claimed that the fact that in the last quarter of the investigation period imports of Chinese brands overcame imports by the Union industry did not dispel the fact that the Union industry's self-imports remained significant and were substantial during the period considered, accounting for the majority of imports from China in the post-IP. Moreover, the GOC and the CCCME provided additional evidence showing that the joint venture between Stellantis and Leapmotor exported to the Union and recalled that also Volkswagen (Anhui) started exporting in the post-IP, contradicting the Commission's finding that Union OEMs would not significantly import from China in the future.

(1253) The Commission noted that the trend in import of Chinese brands described in recital (1251) of this Regulation was not contradicted by the remarks of the GOC and the CCCME and was not based only on the finding that in the last quarter of the investigation period imports of Chinese brands overcame imports by Union OEMs. Indeed, the Commission noted in recital (1251) of this Regulation that, throughout the post-IP, imports of Chinese brands were the only category of imports consistently increasing, compared to the imports of Union OEMs and Tesla, which were instead consistently decreasing. Moreover, as shown in Table 13 of this Regulation, in the last quarter of the post-IP imports of Chinese brands constituted the majority of the imports from China. Furthermore, as stated in recital (1222) of this Regulation, the imports of Stellantis from Leapmotor are of Chinese Leapmotor brands, not European brands. It was recalled that the imposition of the countervailing measures was not meant to prevent imports of BEVs by the Union OEMs or of any other exporter from China but to level the playing field on the Union market. Imports from Union OEMs will continue but their reduced relevance in the total imports from China implies that the measures cannot be said to be against the interest of Union producers only because they affect a minor share of total imports, made by Union OEMs, destined to decrease even more. Therefore, these claims were rejected.

(1254) Following provisional disclosure Company 18 and VDA claimed (i) that certain Union producers, via joint ventures with Chinese producers, were importing BEVs from China and therefore they will have to pay countervailing duties on these imports, (ii) in some instances, these duties were higher than duties on Chinese brands, and (iii) such greater costs will imply less investments for the transition to electrification in the Union.

(1255) The Commission noted that the scope of the investigation includes all BEVs originating in China regardless of the ownership of the brand. While certain Union OEMs imported specific BEV models from China, as outlined in recitals (998) and (1136) of the provisional Regulation, these imports only constituted a small volume compared to the total Union consumption during the investigation. Thus, this claim was rejected.

(1256) Following definitive disclosure, VDA replied that the Commission's rebuttal was insufficient because possible measures affected an important business sector of the Union industry.

([159]) https://www.euronews.com/business/2024/05/15/stellantis-and-leapmotor-to-sell-electric-cars-in-europe-from-september.

(1257) The Commission acknowledged the importance of the BEV sector in the Union industry. However, at the same time, basic Regulation provides that the assessment of the threat of injury caused by Chinese imports must be carried out considering all imports, including – but not limited to – imports by Union OEMs. Moreover, VDA did not challenge the assessment that these represent a small volume compared to total Union consumption. Finally, as shown in Table 13 of this Regulation, imports by Union OEMs are consistently decreasing throughout the post-IP, whereas imports of Chinese brands are increasingly acquiring relevance. Thus, this claim was rejected.

(1258) Following provisional disclosure, Company 24 claimed that many, if not all Union producers, opposed the imposition of the measures. In a context where the speed of the electric transition is imposed by the Green Deal regulations, Company 24 claimed that Union BEVs producers in general fear a slow-down in consumer demand driven by increasing prices of BEVs.

(1259) The Commission noted that, in contrast to Company 24's claim, following the provisional disclosure only Company 24 and Company 18 expressed their position against the imposition of measures. However, this opposition must be seen in light of the risk of Chinese retaliation ([160]) and as concluded in recitals (1255) to (1258) of the provisional Regulation and in recitals (1309) to (1313) of this Regulation, the claimed risk of retaliation did not constitute an element that would speak against the imposition of countervailing measures. The view – implied by Company 24's claim – that the measures will raise prices of BEVs in the Union and restrict consumer's access was brought also by other parties and it was addressed in recitals (1280) and (1286) of this Regulation. Thus, these claims were rejected.

(1260) Following definitive disclosure, Company 24 reiterated its opposition on the imposition of the countervailing measures, whereas the GOC and the CCCME submitted that also Company 22, Company 27, VDA and the European Association of Automotive Suppliers ('CLEPA') expressed their opposition.

(1261) As the GOC and CCCME did not refer to any specific comments of these parties, the Commission noted that, in its rebuttal in recital (1259) of this Regulation, it referred to comments on provisional disclosure, and not to all comments submitted throughout the investigation. Additionally, CLEPA is an association of suppliers, whereas Company 24's original claim related to Union producers. Therefore, this claim was rejected.

(1262) Following definitive disclosure, VDA stated that it expressed the position of Germans OEMs as well as suppliers, so not only Company 24 and Company 18 expressed their position against the measures.

(1263) The Commission acknowledged that indeed also VDA expressed its position against the investigation but noted that, as far as it was aware, all Union producers were acting in the investigation individually, so that VDA was expressing its position in the investigation as an association and not on behalf of the Union producers. The Commission's comment was limited to reporting the positions of Union producers in the comments on provisional measures. Thus, this claim was rejected.

(1264) Additionally, following definitive disclosure, the GOC and the CCCME claimed that the Commission reduced the opposition of the Union producers to the fear of retaliation, whereas the GOC and the CCCME reported other arguments from public statements and Company 24 in its original claim pointed out that measures would slow down the already low BEV demand – with effects on the Union industry's planned launches and investments – and could undermine the incentive to innovate, thereby weakening the Union industry's competitiveness.

(1265) The Commission noted that it already dismissed the public statements reported by the GOC in recital (1243) of this Regulation. It also put into context any limited price increase for consumers – and consequent effects on BEV demand – in recitals (1280) and (1286) of this Regulation and rejected the claim that measures would reduce the competitive pressure on Union producers – and thus their incentive to innovate – in recital (1284) of this Regulation.

([160]) Notably, sections III.2 and III.3 of Company 18's comments, and para. 70 of Company 24's comments.

(1266) Finally, following definitive disclosure Company 27 called on the Commission to properly weigh and balance the effects of countervailing duties on Union BEV producers, users, importers and consumers and on the policy interests in a more comprehensive manner in its final determination.

(1267) Company 27 did not provide any further details or explanations in support of this claim, in particular which precise aspects of the Union interest analysis should be examined in addition and in more depth, or which interests were not appropriately taken into consideration or weighted. The Commission, therefore, is not able to provide any further assessment in this regard and rejected this general claim.

(1268) Following definitive disclosure, Company 27 complained about the Commission's rebuttal in recital (1267) of this Regulation as, in the sensitive version of its submission, provided extensive arguments and evidence on whether the imposition of the measures was in the interest of the Union. Company 27 further argued that it was prevented from including them in the open version of its comments due to the constraints flowing from the need to ensure its anonymity. Therefore, Company 27 requested the Commission a sensitive disclosure addressing the sensitive version of its comments.

(1269) The Commission took note of Company 27's comments and provided it with a sensitive disclosure addressing the sensitive version of its comments.

(1270) In the absence of any other comments regarding the interest of Union producers following provisional disclosure, the Commission confirmed its conclusions set out in recitals (1221) to (1234) of the provisional Regulation.

7.2. **Interest of unrelated importers**

(1271) In the absence of any comments regarding the interest of unrelated importers following provisional disclosure, the Commission confirmed its conclusions set out in recital (1235) of the provisional Regulation.

7.3. **Interest of users**

(1272) In the absence of any comments regarding the interest of users following provisional disclosure, the Commission confirmed its conclusions set out in recitals (1236) to (1243) of the provisional Regulation.

7.4. **Interest of suppliers**

(1273) Following provisional disclosure, VDA reiterated that China was the largest export market for German automotive suppliers and voiced its concerns that a trade conflict with China would certainly also affect German and Union suppliers, i.e. for instance by restricting access to the Chinese market.

(1274) The interest of automotive suppliers and manufacturers was addressed in recitals (1244) to (1249) of the provisional Regulation. In particular, based on the reasons set out in recital (1245) of the provisional Regulation the Commission rejected the argument that measures would disproportionally harm suppliers due to possible retaliatory measures from China and rejected this claim. Given that none of the above parties provided any further information or evidence in this regard, the Commission rejected the claims made in this regard.

(1275) Following definitive disclosure, VDA questioned the lack of analysis of how potential countermeasures by China would affect suppliers and reiterated its claims, which were already addressed by the Commission in the recital above. VDA also pointed out that its position was shared by CLEPA in the submission addressed in recital (1245) of the provisional regulation.

(1276) Following definitive disclosure, Eurofer re-affirmed its support for the imposition of the measures. In particular, it submitted, first, that the Union automotive industry, including BEV producers, was an important downstream industry for the Union steel sector, as it accounted for one fifth of Union steel consumption and it obtained almost all of its needs for steel from Union steel producers. Any injurious effects of Chinese imports on the Union

car sector would therefore have spill-over effects on the upstream steel producers. Second, it considered that ensuring the good health of the Union automotive industry required the imposition of the measures. Third, it highlighted that the automotive sector's demand for specialty steel products drove R & D and investments in the Union steel sector, as shown by various recent investments made by Union steel producers to satisfy specific needs of Union auto manufacturers, including for BEVs. Fourth, Eurofer noted that it was important for the Union to act to prevent third-country subsidies (especially subsidies as big as those found in the current investigation) from negatively affecting Union industries and in turn Union jobs.

(1277) The Commission took duly note of Eurofer's support for the imposition of the measures and the reasons for it.

(1278) In the absence of any other comments regarding the interest of suppliers following provisional disclosure, the Commission confirmed its conclusions set out in recitals (1244) to (1249) of the provisional Regulation.

7.5. **Impact on consumers**

(1279) Following provisional disclosure, the GOC, the CCCME, Geely Group and VDA claimed that the price increase for consumers following the imposition of the measures would be certain. In this respect, according to the GOC and the CCCME the Commission incorrectly compared this certain price increase with the only potential risk of the disappearance of the Union industry. The GOC and the CCCME considered that countervailing measures would result in an increased lack of affordability and availability of BEVs on the Union market. In particular, they alleged that, on the one side, the phase-out of ICE vehicles by 2035 would deprive consumers of the alternative of cheaper ICE vehicles, while on the other side, BEVs would remain too expensive for longer due to the countervailing measures. The measures would limit the range of BEV models available in the Union market and would make Chinese BEV imports more expensive, which would in turn limit the consumer choice. The CCCME also reiterated its reference to the economic analysis from two professors of the Katholieke Universiteit Leuven and the Centre of Economic Policy Research mentioned in recital (1252) of the provisional Regulation, claiming that the Union producers did not offer a full range of BEV models, did not have the capacity to offer models in all segments and that the overlap of models produced by the Union producers with the ones produced by the Chinese producers was very limited.

(1280) The Commission clarified that recital (1251) of the provisional Regulation did not conclude that there would be no price increase for consumers, but that such price increase would likely be limited and would only offset the unfair advantage of the Chinese exporting producers. Any increase of retail prices for consumers will, in addition, depend on the structure of the sales channels of the exporting producers and on the business decision of the individual exporters' groups how duties will be ultimately reflected in their prices to the consumers. Regarding the claim that cheaper ICE alternatives for consumers will not be available as of 2035, the CCCME failed to explain to what extend such fact was relevant in the assessment of the interest of users in the context of the current investigation regarding BEVs. On the availability of affordable BEVs produced in the Union, the Commission recalled the fact that, as noted in recital (1078) of the provisional Regulation, the BEV industry was a capital-intensive industry and still needed time to achieve economies of scale to cover its high fixed costs. The Chinese companies have already achieved economies of scale, due to the substantial amounts of subsidies granted by the GOC. The countervailing measures will allow the Union industry to reach such economies of scale and thus to decrease its unit cost of production, which in turn will allow the Union industry to potentially decrease its sales prices. If the Commission did not impose countervailing measures, the Union industry would not be able to produce and sell enough BEVs in order to obtain such economies of scale and decrease prices in the future. Likewise, economies of scale will also allow the Union producers, due to the transition to electrification, to launch new models, including affordable models and this should allow a wide range of BEV models in the Union available, in contrast to what was claimed by the GOC and the CCCME. In this scenario, the Union industry would be even able to cover the full range of BEVs. It is also expected that imports from China will continue to flow, albeit at fair price levels at a level playing field. Finally, the Commission found in recitals (1031) and (1044) to (1048) of the provisional Regulation that the matching between the Chinese PCNs and the Union PCNs was above 90 % for each of the exporting producers, so that the overlap between Union production and Chinese imports is significant. Thus, these claims were rejected.

(1281) Following definitive disclosure, the GOC and the CCCME took issue with the Commission's finding that countervailing duties will allow the Union industry to reach economies of scale, because it entailed the Union producers' willingness in achieving the transition to BEVs as fast as possible. The CCCME further argued that the Union producers continued investing in ICE and hybrid vehicles (Porsche abandoned its aim to achieve 80 % of BEV sales by 2030 ([161]) and Stellantis announced that it would halt the production of the electric Fiat 500 and invest more on hybrid vehicles instead ([162])). Separately, the GOC and the CCCME shared the Commission's assessment that the decrease of the Union industry's sales prices is potential, because Union producers in the past prioritised the sale of premium cars instead of mass-market models. The CCCME also reiterated the relevance of the disappearance of the cheaper alternative represented by ICE vehicles, with consumers being left only with higher-priced BEVs.

(1282) The Commission noted that the transition to electrification in the Union is subject to the 2035 deadline, as of which all sales of new vehicles in the Union will be zero-emission vehicles, notably BEVs (except vehicles than run exclusively on e-fuels). Therefore, irrespective of the strategies identified by individual Union producers, such Union producers are still bound to intermediate and final emission targets identified in Regulation (EU) 2019/631 which was later amended by Regulation (EU) 2023/851. Furthermore, the preference for a strategy focused on premium cars in the past does not fit to the whole Union industry, which is composed of both premium and mass-market producers. In addition, imports from China may have had an impact on such a strategic choice, whereas countervailing measures will allow for the possibility of strengthening or entering the offer in the mass market. Moreover, the Commission noted that Union producers were already announcing entry-level BEVs produced in the Union, as it was the case for Volkswagen's announcement of a EUR 20 000 BEV and Renault's launch of a new generation Twingo BEV in 2026 with a target price below EUR 20 000 ([163]). Finally, concerning the disappearance of cheaper ICE vehicles as of 2035, the Commission noted that this is not an effect of the imposition of the countervailing measures but of the 2035 deadline. However, as stated in recital (1280) of this Regulation, measures will allow the Union industry to reach such economies of scale and thus to decrease its unit cost of production, which in turn will allow the Union industry to potentially decrease its sales prices. Without fair market conditions, Union producers would be impaired in this process. Therefore, these claims were rejected.

(1283) Following provisional disclosure, the GOC and the CCCME claimed that BEVs in the Union will remain more expensive for a longer time period also because duties will disincentivise the Union industry from being competitive and from providing BEVs at cheap prices. In this respect, the GOC and the CCCME argued that, in previous investigations ([164]), the Commission assessed the impact of the measures on competition in the Union market, analysing whether sufficient competitive pressure would be maintained. They further claimed that the Union industry focused on premium BEV models and that this focus constituted evidence that the industry was shielded from meaningful competition.

(1284) The Commission noted that, as indicated in recital (995) of the provisional Regulation, in the Union BEV market there are around 10 groups of Union producers competing with each other. In addition, according to Table 17a of the provisional Regulation, imports from all countries except the PRC held a 15,1 % market share in the investigation period. Furthermore, as already recalled in recital (1251) of the provisional Regulation, countervailing measures will not stop imports from China, which will continue to flow. Thus, the Commission considered that there is high competitive pressure in the Union that will continue also following the imposition of the countervailing measures. The Commission also considered that the claim that Union producers focused on premium BEV models was refuted by the high level of matching as explained in recitals (1031) and (1044) to

([161]) https://europe.autonews.com/automakers/porsche-waters-down-ev-ambitions-says-transition-will-take-years.
([162]) https://europe.autonews.com/automakers/stellantis-boosts-gearbox-output-hybrids-ev-sales-slow.
([163]) https://europe.autonews.com/automakers/vw-plans-entry-level-bev-despite-collapsed-renault-talks.
([164]) Commission Implementing Regulation (EU) 2017/336 of 27 February 2017 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain heavy plate of non-alloy or other alloy steel originating in the People's Republic of China (OJ L 50, 28.2.2017, p. 18), recital (163); Commission Implementing Regulation (EU) 2016/388 of 17 March 2016 imposing a definitive anti-dumping duty on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India (OJ L 73, 18.3.2016, p. 53), recitals (145) and (149); and Council Regulation (EC) No 348/2000 of 14 February 2000 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes of iron or non-alloy steel originating in Croatia and Ukraine and collecting definitively the provisional duty imposed (OJ L 45, 17.2.2000, p. 1), recitals (30) and (39).

(1048) of the provisional Regulation, and that even if that claim were true, it would not show that Union producers were shielded from Chinese competition. The above parties have not brought any evidence in support of their claim. The precedents cited have to be seen on their own merits and the factual situation in these cases were not comparable to the one in the current case, as no evidence was brought forward of any abuse of a dominant position or any other anti-competitive behaviour of Union producers such as those addressed in the precedents mentioned by the CCCME and the GOC. Therefore, this claim was rejected.

(1285) Following provisional disclosure, the GOC and the CCCME also submitted that the Commission's assessment that the potential price increase would be limited and that is expected to be at least in part absorbed by the importers was not supported by evidence, since the Commission did not assess the situation of the importers and the impact of the duties on the interests of consumers. In this respect, also Company 18 claimed that the duties will not be fully absorbed by the companies (though it was unclear in its comments if these were the producers or the importers), but eventually paid by the Union customers. As evidence of this, Company 18 brought the fact that Tesla raised the price of its Model 3 BEV by EUR 1 500 in certain Member States' markets in reaction to the imposition of the provisional countervailing duties, and that other brands such as MG and NIO were considering similar measures. The CCCME also referred to a statement in the economic analysis mentioned in recital (1252) of the provisional Regulation and in recital (1279) of this Regulation, according to which limiting BEV imports would ingenerate a reduction of competition and an upward pricing pressure.

(1286) The Commission noted that in accordance with Article 12(2) of the basic Regulation provisional countervailing duties shall be secured by a guarantee, rather than actual payment of the duty. Furthermore, the collection of the secured guarantee is possible but not certain, as it is subject to an assessment at definitive stage, which may result in the release of the guarantee secured, as in this case. Therefore, in principle, price increases decided by the companies in question should not have been linked to the imposition of provisional countervailing duties as such. Secondly, the Commission recalled that no unrelated importer or representative consumer organisation cooperated in the investigation and that therefore, the Commission had to base its assessment on the information available. However, following pre-disclosure, the European Consumer Organisation (BEUC) published a press release highlighting that countervailing measures were necessary to create fairer market conditions and that fair competition remained the most effective way to increase choice and innovation ([165]). Thus, based on the information available in the investigation file, it can be reasonably concluded that price increases for the consumers would be limited for the following reasons: (i) any price increase would be justified and limited to the unfair subsidisation established; (ii) definitive countervailing measures are calculated based on the CIF import price which is lower than the price to the end consumer and therefor the absolute amount of the duty paid is limited to duties paid at CIF level; (iii) while the duties may not be fully absorbed by importers, it can be reasonably assumed that at least part of the price increase would be absorbed by importers. This is the typical economic result of a sale channel which includes, between the exporting producer and the consumer, a network of exporters, traders, importers, distributors and dealers. The more layers, the more is likely that the price increase will be at least partially diluted in the passages between each step, even if these actors are related, notably at the level of the importers, as the duty is applied on the CIF value of the BEV imported. On the contrary, in a business model where the consumer is closer to the exporting producer, such as where the consumer purchases the BEV online on the producer's web platform, as it is for certain exporting producers, including Tesla (see recitals (1027), (1166) and (1231) of the provisional Regulation), it is more likely that the producer will be able to reflect the price increase directly on the retail price. Still, except for Tesla, the online sale channel remains only one of the sale channels; (iv) in any case, any price increase would ensure that the Union and the Chinese producers compete on a level playing field and would prevent injury to materialise for Union producers. Countervailing duties will only compensate the distorting subsidisation; (v) as mentioned in recital (1280) of this Regulation, the duties, although having an effect of increased prices at the start, should allow the Union producers to reach economy of scales and thus reduce their unit production cost over time with a price reducing effect; and (vi) as also mentioned in recital (1280) of this Regulation, the Union industry will produce a wider range of models in increasing competition with each other which also has a price reducing effect on the market. Therefore, this claim was rejected.

([165]) https://www.beuc.eu/press-releases/eu-tariffs-chinese-electric-cars-must-ultimately-lead-more-competitive-and.

(1287) Following definitive disclosure, the GOC and CCCME reiterated the claim by Company 18 on the prices of Tesla, MG and NIO, which was already addressed by the Commission in recital (1286) of this Regulation. Moreover, the GOC and the CCCME claimed that price increases were most certainly linked to the imposition of provisional countervailing duties because companies must anticipate the potential for these duties to be collected. Finally, the GOC and the CCCME claimed that the Commission did not provide the basis for its determination that price increases for consumers would be limited.

(1288) The Commission noted that, in the public announcement of the disclosure of its definitive findings, it also announced its intention not to collect provisional countervailing duties ([166]) so that it rightly stated in recital (1286) of this Regulation that their collection was possible but not certain. Therefore, if linked to the provisional countervailing duties, any price increase or considered price increase would have not been warranted. While this applies to provisional countervailing duties, as regards definitive duties, the Commission carried out the current investigation in full compliance with WTO and Union rules, so that no effect on any actual or potential price increase could be attributed to definitive measures even before their imposition. Finally, the Commission also noted that it explained at length in recital (1286) of this Regulation why it concluded that any price increase for consumers would be limited. Therefore, the claims were rejected.

(1289) Following provisional disclosure, the GOC and the CCCME claimed that the Commission should terminate the investigation, as done in a previous case ([167]), because of the shortage of supply of certain segments of the product under investigation, i.e. affordable, smaller-sized BEVs, and of the lack of capacity of the Union industry to supply all market segments.

(1290) The Commission referred to recitals (1060) and (1208) of the provisional Regulation, where the investigation revealed that the Union industry has enough capacity to manufacture BEVs and meet the demand on the Union market. Furthermore, as indicated in recital (1280) of this Regulation, the countervailing measures will allow the Union industry to reach the appropriate economies of scale and thus to decrease its unit cost of production, which in turn will allow the Union industry to potentially decrease its sales prices and to significantly increase its production of affordable BEVs. Thus, the claim was rejected.

(1291) In the absence of any other comments regarding the impact on consumers following provisional disclosure, the Commission confirmed its conclusions set out in recitals (1250) to (1251) of the provisional Regulation.

7.6. **Effects on climate objectives**

(1292) Following provisional disclosure, the GOC, the CCCME, Geely Group and Company 18 claimed that the measures would have a negative impact on the EU's climate objectives because BEVs would become less affordable, as exporting producers would pass on at least some of the duties to Union consumers. The GOC and the CCCME also stated that affordable BEVs were essential for the EU's transition to electric mobility and the Union industry did not have the capacity to supply the demand needed to achieve the decarbonisation targets by 2035. In this respect, the GOC and CCCME claimed that the findings concerning the Union industry's capacity in Table 4 of the provisional Regulation was not substantiated by verifiable evidence and the Commission failed to assess whether the Union industry had sufficient capacity to meet the demand needed to achieve the 2035 target. A report of the

([166]) https://ec.europa.eu/commission/presscorner/detail/en/qanda_24_4302.

([167]) Commission Decision of 19 June 2007 terminating the anti-dumping proceeding concerning imports of synthetic staple fibres of polyesters (PSF) originating in Malaysia and Taiwan and releasing the amounts secured by way of the provisional duties imposed (OJ L 160, 21.6.2007, p. 30), recitals (15) to (29) and (40).

European Court of Auditors ('ECA') and public statements by an ECA Member would support the view that this was not the case, according to the GOC and the CCCME ([168]). In their view, and in the view of Company 24, the Commission did not take into account in the assessment of the Union industry's capacity the following elements: (i) supply chain bottlenecks, notably the Union industry's dependency on imports of batteries (an aspect highlighted also by VDA) and raw materials and the limited battery production capacity in the Union, and, for the GOC and CCCME only, (ii) the fact that all ICE vehicles capacity would not move to BEVs in the Union, as the other markets not subject to the 2035 ban would have huge ICE demand for the foreseeable future and the re-allocation of ICE vehicle capacity to BEV production could find obstacles which would complicate and slow it down. For Company 24, the Commission did not consider (iii) the insufficient charging infrastructure in the Union.

(1293) In response to these claims, the Commission referred to recitals (1280) and (1286) of this Regulation for the passing on of the duties to consumers and on the continued availability of Chinese BEV, and reiterated that, as indicated in recital (1280) of this Regulation, the countervailing measures will allow the Union industry to reach the appropriate economies of scale and thus to decrease its unit cost of production, which in turn will allow the Union industry to potentially decrease its sales prices. Thus, the EU's transition to electric mobility could rely on affordable BEVs produced by the Union industry. Moreover, as explained in recital (1057) of the provisional Regulation, in the absence of any other more reliable data, the Commission verified the capacity utilisation rate of the sampled Union producers, based on which it calculated the production capacity of the Union industry, which was considered as a reasonable estimate. None of the interested parties has brought forward any other more reasonable evidence of the capacity utilisation rate of the Union industry. Finally, countervailing duties will only offset the subsidisation found and imports will continue to flow. Thus, the ECA report, since it is meant to assess the effectiveness of the Union's policies in reaching the 2035 target, is not directly relevant for the assessment of whether the imposition of the measures is not against the Union interest. Furthermore, this report does not take into account the imposition of countervailing duties on BEVs which should facilitate the transition and help EU industry increase its capacity. The same holds true for the public statements of the ECA Member. Furthermore, to the contrast to what was claimed, the Commission considered supply bottlenecks in recital (1225) of the provisional Regulation, in the context of the Union interest analysis, and rebutted a similar claim on battery production capacity in recital (1267) of the provisional Regulation. While the Union industry was indeed dependent on battery imports, it committed significant investments in battery production capacity in the Union, as also detailed in recital (1092) of the provisional Regulation. In any case, the purpose of the current investigation is only to restore the level playing field on the Union market. The imposition of countervailing measures does not exclude that the Union may take other policy initiatives to tackle different issues that the Union industry is confronted with. As regards the fact that not the whole capacity for ICE vehicles will move to BEVs, the Commission noted that, while the conversion of the production lines, or their flexibility, was an element underlined in recital (1058) of the provisional Regulation, it never assumed that the Union's ICE capacity will be completely transferred into BEV capacity and noted that its production capacity calculation was based on the production of BEVs and on the verified capacity utilisation rate of the sampled Union producers for BEVs. Therefore, the capacity calculation was not affected by this consideration but considered only the production capacity during the period considered. Finally, as regards the alleged insufficient charging infrastructure, the Commission referred to its findings in recitals (1191) and (1192) of the provisional Regulation, showing that there was rapid progress in addressing any bottlenecks related to charging infrastructure, so that this could not constitute a restraint to the Union industry's production capacity. Thus, these claims were rejected.

(1294) Following definitive disclosure, the GOC and the CCCME reiterated that the Commission failed to consider production bottlenecks, notably problems in scaling up and raw material shortages, and that the Union industry was therefore walking back on announced goals and requesting a delay and more flexibility on the 2035 phase-out of new ICE vehicles. In this respect, they mentioned a number of press statements by Union producers. Moreover, they reiterated the dependency of the EU's climate goals on imports from China, based on press reports and on comments by Company 24. Furthermore, they challenged the Commission's assessment on the

([168]) ECA, *Special Report 15/2023: The EU's industrial policy on batteries – New strategic impetus needed*, 2023, available at https://www.eca.europa.eu/en/publications?ref=SR-2023-15.

significant investments committed to battery production capacity in the Union based on press report and by claiming that certain battery projects were being cancelled and delayed (ACC announced that it had paused plans for its German and Italian plants ([169]), Northvolt announced that it would slow its battery projects due to scale-up issues ([170]), Mercedes-Benz stated that it would slow its battery plant plans ([171]), and LG Energy Solution announced that it was considering shifting to building energy storage ([172])). Finally, they claimed that battery project in the Union would face protests and opposition due to environmental concerns and scaling up battery production was challenged by safety issues, notably fires originating from the battery.

(1295) The Commission noted that it addressed production bottlenecks in recital (1293) of this Regulation. Furthermore, the Commission noted that the CCCME and the GOC did not quantify the effect of the alleged bottlenecks on the production capacity of the Union industry. Moreover, the existence of such bottlenecks did not support the conclusion that the imposition of the countervailing measures was not in the Union interest. As it was reiterated in this Regulation the purpose of the imposition of the countervailing measures is to level the playing field. In addition, despite announcements by certain Union producers, such Union producers are still bound to the emission targets stipulated in Regulation (EU) 2019/631 which was later amended by Regulation (EU) 2023/851. Moreover, the Commission, while noting that measures should facilitate the transition and help Union industry to increase its capacity, noted that the measures are not meant to develop production of BEVs in the Union so as to fully replace Chinese imports allegedly needed for the achievement of the 2035. The purpose of the current investigation is only to restore the level playing field on the Union market. Imports will continue to flow. Furthermore, as regards the announcements of battery projects cancelled or delayed in the Union, the Commission reiterated its view expressed in recital (851) of this Regulation that the Union BEV industry, while currently strongly dependent on imports of Chinese batteries, is also not limited to using batteries produced in the Union, so that it will continue to import from China and other sources also after the imposition of the measures. Finally, the Commission considered that environmental concerns in battery production and safety concerns in battery use apply irrespective of their country of production, so that they do not apply only to battery production in the Union. Therefore, these claims were rejected.

(1296) Following provisional disclosure, the GOC and the CCCME also claimed that, in the assessment in recital (1060) of the provisional Regulation, that the Union industry had the capacity to supply the demand in a post-measures scenario, the Commission did not take into account the Union industry's export, not only of BEVs but also ICE vehicles, which will keep occupying part of the Union industry's capacity given that third countries do not have the same de-carbonisation target by 2035 as the Union.

(1297) The Commission noted that it took into account the Union industry's exports of BEVs in recitals (1183) to (1186) of the provisional Regulation, in the context of the causation analysis. Given the attractiveness of the Union BEV market described in recitals (1119) to (1123) of the provisional Regulation and considering that the market size and in particular the clear road-map to electrification are valid also for Union producers, they will focus on the Union market given the expected increasing demand. Indeed, the Union producers' exports include mainly ICE vehicles. Finally, as mentioned in recital (1293) of this Regulation the capacity calculation in Table 4 of the provisional Regulation was not based on the ICE vehicles capacity so that the argument that the Commission did not take into account the Union industry's exports, including exports of ICE vehicles, is not valid. Therefore, these claims were rejected.

(1298) Along the same line, the GOC and the CCCME claimed that when considering the production capacity of the Union producers and their ability to supply the Union market, the Commission did not consider the recent production site closures by the Union BEV industry and battery suppliers, referring in particular to the bankruptcy of Fisker, the reduction of BEV production by Volkswagen and the delay of the launch of new models by Jaguar and Land Rover as well as other examples.

([169]) https://www.reuters.com/business/autos-transportation/ev-battery-maker-acc-halts-german-factory-delays-italy-plant-2024-06-04/
([170]) https://europe.autonews.com/suppliers/northvolt-may-slow-growth-plan-evs-sales-stumble.
([171]) https://europe.autonews.com/automakers/mercedes-cautious-battery-expansion-plans-ev-demand-slumps.
([172]) https://www.businesstimes.com.sg/companies-markets/europes-biggest-electric-car-battery-maker-mulls-new-products-demand-wanes.

(1299) As regards the bankruptcy proceedings involving Union producer Fisker, as explained in recital (675) of this Regulation, Fisker was not considered a Union producers in the list of 10 Union producers mentioned by the Commission in recital (674) of this Regulation. The reduction of BEV production by Volkswagen and the delay in the launch of new models by Jaguar Land Rover do not affect capacity calculations. The same applies to the delay in BEV production of Ineos, which had not even started production, according to the source relied on by the GOC and the CCCME ([173]). Also change in plans of Northvolt and SVOLT Europe did not affect the investment estimate in recital (1092) of the provisional Regulation, which included only investments of Union BEV producers, and not also of battery suppliers. Therefore, this claim was rejected.

(1300) Finally, according to the GOC and the CCCME, the Commission did not consider the market segmentation in the Union and whether the Union industry would be able to supply all market segments. Likewise, it was claimed that the Commission did not consider the significant differences in the product mix between Chinese imports and Union production. These parties claimed, taken into consideration these elements, the Union industry will not be able to contribute sufficiently to the electrification of the Union market.

(1301) For the reasons explained in recital (1042) of the provisional Regulation the Commission segmentation of the market was not appropriate in this case. Neither the GOC or the CCCME provided additional information or evidence in this regard that would have reversed this conclusion. As concerns differences in the product mix between Chinese imports and Union production, the Commission found in recitals (1031) and (1044) to (1048) of the provisional Regulation that the matching between the Chinese PCNs and the Union PCNs was above 90 % for each of the exporting producers. Finally, as explained in recital (1280) of this Regulation, the Commission concluded that the Union industry could be able to increase its range once it reached sufficient economies of scale and lowered its unit cost of production, which would allow the Union industry to produce more affordable BEVs. Thus, these claims were dismissed.

(1302) Geely Group, for its part, disagreed with the Commission's finding that the efforts to combat climate change cannot be built upon unfair competition by low-priced subsidised BEVs. They claimed that the Commission was mis-guided because Geely Group was committed to fostering innovation and growth in the Union BEV industry and the imposition of the measures would be counterproductive for the Union's green transition.

(1303) The Commission based its findings on the fact that unfair priced imports from China to the Union are taking over significant market shares and constitute a threat to the Union industry as set out in detail in Section 5 of the provisional regulation and of this Regulation. Geely Group did not as such contest these figures and therefore, it is inappropriate to claim that the Commission was mis-guided. The fact that Geely Group stated that it was committed in fostering innovation and growth in the Union is not supported by any evidence, nor is such statement verifiable and can devaluate the findings made by the Commission. This claim had therefore to be rejected.

(1304) Following definitive disclosure, Geely Group substantiated its claim that it took a leading role in the transition to BEVs by recalling that: Volvo, part of Geely Group, was among the first brands selling BEVs in the Union even before 2012 and acquired Polestar, which was repositioned as a BEV manufacturer as of 2017; Geely Group and Volvo together formed the joint venture Lynk & Co., headquartered in Sweden, which is a brand meant to disrupt the traditional ICE vehicle industry; Geely Group and Daimler formed the joint venture Smart, transitioning the brand to a fully electric offering; and Volvo committed to fully electrify its offering by 2030 and was the first ICE vehicle brand to announce that all its models would be electrified. Based on this, Geely Group submitted that it was dedicated to the climate transition and to driving the shift towards BEV production in the Union.

([173]) https://www.theguardian.com/environment/article/2024/jul/03/jim-ratcliffes-ineos-pulls-launch-of-fusilier-electric-suv.

(1305) The Commission acknowledged the elements brought forward by Geely Group and that Geely Group was indeed committed to driving the shift towards BEV production in the Union. Notwithstanding this, the findings of threat of injury caused by the Chinese imports remain and cannot be addressed by Geely Group's position with respect to the green transition. Therefore, this claim was dismissed.

(1306) Following provisional disclosure Company 18 and VDA claimed that, following the measures, Chinese exporting producers might decide not to offer BEVs at all on the Union market, reducing choice and availability and hampering the Union's climate goals. According to Company 18, the consequent slower ramp-up of electric vehicles in the Union may entail risks for the Union producers of being subject to the fines for non-compliance with the emission targets in the road to full de-carbonisation by 2035.

(1307) The Commission considered that the risk of an outright import stop is unrealistic, due to the findings of attractiveness of the Union market for Chinese exporting producers, described in recitals (1119) to (1129) of the provisional Regulation. As regards possible fines for non-compliance with the emission targets, the Commission noted that, due to the transition to electric mobility, the Union BEV market will increase its size and Union producers will be able to develop the required economies of scale to seize the opportunities offered by the growing market. Such scenario would be under threat should measures not be imposed. Thus, this claim was dismissed.

(1308) In the absence of any other comments regarding the effects on climate objectives following provisional disclosure, the Commission confirmed its conclusions set out in recitals (1250) to (1254) of the provisional Regulation.

7.7. **Risk of retaliation**

(1309) Following provisional disclosure, Company 18 and VDA claimed that the Commission's approach according to which the investigation does not cover the access of Union companies to the Chinese market and does not consider the impact of Chinese retaliation following the imposition of countervailing measures, would not take into account market reality. They argued that China is important for many Union producers not only in terms of sales and production, but also for innovation and supply chain so that, according to Company 24, the Union industry's protection in the Union may come at the expense of its competitiveness everywhere else. According to Company 18, Company 24 and VDA, the measures would create uncertainty and frictions also in other economic domains which would not be in the Union interest, whereas it is in the Union interest to keep the Union's export capability. For Company 18 and VDA, without access to China as an export market, Union producers would have less resources to invest in the electric mobility. Finally, VDA recalled that Germany has a significant surplus in the automotive trade with China.

(1310) The Commission acknowledged the importance of China as an export market and source of innovation and supply for the Union producers, but reiterated the fact that the outcome of this investigation should not result in less favourable market access for Union suppliers and producers in China. As far as it concerns the possibility that China engages in acts of retaliation following the imposition of the measures, the Commission referred to recitals (1256) to (1258) of the provisional Regulation, where it clarified that China and Chinese exporting producers enjoyed extensive rights of defence and to participate in this fact-based investigation, as well as to seek an impartial judicial review of the final decision, without the need to resort to retaliation. Therefore, the claimed risk of retaliation did not constitute an element that would speak against the imposition of countervailing measures. While the Commission remains vigilant towards any retaliation in the automotive or other sectors, the threat of potential retaliation cannot prevent the Commission from adopting legitimate, measured and justified countervailing measures. Thus, this claim was rejected.

(1311) Following definitive disclosure, Company 24 reiterated its comments, which were already addressed by the Commission, whereas VDA raised its concerns that the Commission did not consider any possibility and impact of counteraction by China in further depth.

(1312) The Commission clarified that in the framework of a trade defence investigation it could not engage in any speculation concerning retaliatory action which are not foreseen by the proceeding and relevant WTO and Union rules which govern it. Legitimate avenues to seek redress of the decision taken within this investigation are available to China and Chinese companies, as outlined in recital (1310) above. Thus, this claim was rejected.

(1313) In the absence of any other comments on the risk of retaliation following provisional disclosure, the Commission confirmed its conclusions set out in recitals (1255) to (1258) of the provisional Regulation.

7.8. **Government incentives in the Union**

(1314) Following provisional disclosure, the GOC and the CCCME alleged that the Union industry was already protected from intense competitive pressure through consumer subsidies like the eco-bonus in France, which stimulated sales of the Union industry's BEVs by excluding Chinese-made BEVs from the list of eligible vehicles.

(1315) As in recital (1262) of the provisional Regulation, the Commission reiterated that any potential subsidies in the Union are not the subject matter of this investigation and does not affect the finding that the GOC provided countervailable subsidies to the Chinese exporting producers. In accordance with the basic Regulation, the Commission is therefore entitled to impose definitive countervailing measures on imports of BEVs originating in China. The fact that there were consumer subsidies granted in the Union did not affect the finding that without countervailing measures the Union industry is exposed to a serious and imminent threat of a substantial increase of low priced BEVs to the detriment of the production and sales of BEVs of the Union industry. In particular, the eco-bonus in France does not exclude BEVs based on their country of production, such as Chinese-made BEVs, as claimed, but its eligibility criteria are based on objective environmental criteria. Therefore, this claim was rejected.

(1316) In the absence of any other comments on government incentives in the Union following provisional disclosure, the Commission confirmed its conclusions set out in recitals (1261) to (1262) of the provisional Regulation.

7.9. **Protectionism**

(1317) Following provisional disclosure, the CAAM claimed that through the imposition of provisional measures, the Commission implemented trade protectionism with exaggerated means under the guise of compliance, which was detrimental to free trade and fair competition.

(1318) The Commission strongly disagreed with this claim. The imposition of countervailing measures when legal conditions are met is not protectionism. Therefore, the claim was rejected.

(1319) The CAAM also claimed, based on the assumption that as the German BEVs producers not supporting the investigation would enjoy competitive advantages, that the sampled Union producers, in contrast, did not enjoy the same competitive advantages and thus were 'lagging behind'. Based on this assumption, the CAAM further argued that the EU was 'coerced' by a few monopolies, especially those in a lower competitive position, to protect their interest at high costs, which hindered normal market competition and sacrificed the interest of consumers.

(1320) The CAAM's claims were purely speculative without any supporting evidence. Therefore, these claims were rejected.

(1321) The CAAM furthermore claimed that as the VDA and Company 29 opposed the investigation and, despite very little data on unrelated dealers and users, the Commission established a causal link between subsidized imports and the injury suffered by the Union industry. The CAAM argued that it is an 'objective law of industrial development' that at the initial stage of transformation, products imported from first-mover regions have short-term competitive advantages and rapid growth, and they motivate local companies to quickly catch up and recover their market share. The CAAM claimed that the provisional Regulation ignored this industrial law and artificially created a threat of injury.

(1322) The Commission noted that Company 29 was supporting the investigation as explained in recital (1247) of the provisional Regulation, in contrast to what was stated by the CAAM. Furthermore, the Commission, as described in recitals (1170) and (1218) of the provisional Regulation, based its assessment of the causal link between the subsidies and the threat of injury, on the effect of the import volumes and prices of the Chinese BEVs on the situation of the Union industry, and by assessing (and excluding) other possible factors that could have contributed to or attenuate the causal link established, such as imports from other third countries, the export performance of the Union producers, demand related factors, competitiveness of the BEVs industry and other identified factors. This assessment is based on facts collected during the investigation, verified whenever possible. The information collected from dealers and users is used to establish the impact of measures on their situation and thus to establish whether there are compelling reasons in terms of Union interest that speak against the imposition of measures. Therefore, the information provided by dealers and users is irrelevant in the context of the causality determination and the non-cooperation of these parties had no impact on the causality determination. The claim of the CAAM was therefore rejected.

(1323) As concerns the industrial law referred to by the CAAM, the Commission noted that the situation of the Union industry and the threat of injury, as above is based on detailed information collected and verified from the sampled Union producers, on the one hand and on other verifiable facts collected during the investigation. The Commission's assessment in this regard is set out in detail in recitals (1050) and (1169) of the provisional Regulation. The claim that the Union producers will quickly recover their market share after having lost it to the first mover, is however not substantiated by any further information or evidence and could not be accepted. This claim had therefore to be rejected.

(1324) Finally, the CAAM also claimed that the EU should maintain open competition which has been proven of great benefit of both, the Chinese and the Union producers in the past. They argued that the future progress also requires free market competition and cooperation between Chinese and European companies.

(1325) The EU is committed to free trade and acknowledges the benefits of an open economy. However, free trade needs to be fair and if there are countervailing subsidies granted by third countries that are injuring or threating to injure the Union industry, the EU is entitled to take appropriate measures, which is done in the current case.

7.10. **Lesser duty rule and level of the duties**

(1326) Following provisional disclosure, the Geely Group and the SAIC Group requested the Commission to consider the application of the lesser duty rule. In this regard, the Geely Group argued that given the urgency in seeing the BEV sector succeed, there were compelling grounds to set duty levels at the injury margin as this would afford the Union industry sufficient protection while ensuring that international competition continues to drive innovation for affordable BEVs. The Geely Group further argued that the imposition of high levels of duties on imports of BEVs from China was not in the Union interest. The SAIC Group noted that the Commission did not calculate an injury elimination level (i.e., the amount of underselling per sampled exporting producer) as it should have, including in a case involving a threat of material injury, and could thus not have clearly concluded, in accordance with Article 12(1) of the basic Regulation, that it was in the interest of the Union to impose the provisional duties at the level corresponding to the total amount of countervailable subsidies.

(1327) The SAIC Group therefore requested the Commission to calculate an individual underselling margin for each sampled exporting producer, as a first step, and as a second step, to consider whether imposing the duties at the injury elimination level would be contrary to the Union's interest. In this regard, the SAIC Group submitted that the lesser duty rule should not be waived, and NIO claimed that it would be in the Union interest to impose countervailing duties based on the injury margin.

(1328) Company 24 also claimed that in the event that Commission decides to impose definitive duties, it must recognise the need to balance the nature of the threat of injury against the very likely harm that will result for the wider Union interest, taking into account also the different nature of the exporting producers involved in the investigation and that the Commission could achieve such outcome by setting duties at the minimum level adequate to remove the injury, which could be designed as a uniform duty rate applied across the board. Company 24 further submitted that, in the context of an industry in a start-up phase, the basis for such a duty cannot be the underselling margin. Instead, Company 24 stated that a more appropriate approach would consist of taking into account the forecasted price difference between Union producers' sales and Chinese BEV imports at the dealer level, at the end of the start-up phase. Due to the continuous cost reductions achieved by the Union producers, as well as the increasing economies of scale resulting from more and more consumers shifting to BEVs, the per unit cost of Union produced BEVs was likely to decrease rapidly. This, as well as the continuing downward price pressure exercised by the ICE and hybrid models, was bound to result in lower prices, thereby reducing the price difference between the models of Chinese OEMs and the Union producers.

(1329) The Commission noted that the legal standard for the determination of the level of the duties is set in Articles 12(1) and 15(1) of the basic Regulation. In accordance with the third subparagraph of Article 15(1) of the basic Regulation, the amount of the countervailing duty shall not exceed the amount of countervailable subsidies established. The fourth subparagraph of the same article sets an exemption to this rule and should be interpreted narrowly. Accordingly, only in cases where the Commission, on the basis of all the information submitted, can clearly conclude that it is not in the Union's interest to determine the amount of measures at the level of countervailable subsidies established, the amount of the countervailing duty shall be less if such lesser duty would be adequate to remove the injury to the Union industry. In the case at hand, after examination of all the information submitted, the Commission could not clearly conclude that was not in the Union's interest to determine the amount of measures at the level of countervailable subsidies established. Moreover, the level of duties ranging between 9,0 % and 36,3 % could not be considered high. Furthermore, as explained in recital (1253) of the provisional Regulation, the purpose of the countervailing duties was not to stop the imports of BEVs from China, but to restore the level playing field on the Union market distorted by the subsidized imports from China at low prices. The Union industry will thus be able compete on fair terms with the imports of BEVs from China on the Union market which will stimulate innovation. Therefore, the claims were rejected.

(1330) Following definitive disclosure, Geely Group and Company 24 reiterated their comments, which were addressed by the Commission in recital (1329) of this regulation. Company 24 also submitted that the basic Regulation does not prescribe any rule or methodology on how the lesser duty should be calculated, the only requirement being that is should be adequate to remove the threat of injury to the Union interest. Moreover, Company 24 claimed that there was no basis for the Commission's restrictive interpretation in the context of the application of the lesser duty rule, and that the Commission could not hold that the imposition of duties at a level higher than what is necessary to remove the perceived threat of injury is in the interest of the Union.

(1331) The Commission noted that the narrow interpretation of the lesser duty rule derives from its nature as exception and reiterated that, in any case, in the present case it could not clearly conclude that it was not in the Union's interest to determine the amount of measures at the level of countervailable subsidies established.

(1332) Following definitive disclosure, Polestar submitted that the assessment as regards whether it is not in the Union's interest to resort to the lesser duty rule when determining the level of the duties has no bearing for the acceptance of a price undertaking. According to Polestar, there is nothing in the basic Regulation that would link Article 13(1) to Article 15(1) and nothing that makes one conditional to the other. Both articles should be read separately. This reading would be confirmed by the Communication from the Commission to the European Parliament and the Council on the revised lesser duty rules in anti-dumping and anti-subsidy investigations in the

EU ([174]). In this report, the template of the Commission for report distinguished, on the one hand, the lesser duty rule in anti-subsidy investigations under Article 12(1) and Article 15(1) of the basic Regulation (point (3), and, on the other hand, the lesser duty rule under Article 13(1) of the basic Regulation (point (4).

(1333) The Commission took note of Polestar's comment but considered that indeed the Union interest analysis did not bring to light any compelling reasons why it would not be in the Union interest to impose definitive countervailing duties corresponding to the total amount of countervailable subsidies found.

7.11. **Alternative solutions**

(1334) Following provisional disclosure VDA argued that, without imposing measures, the Union could protect its legitimate interests and address challenges through discussions with China, which is allowed by anti-subsidy rules and is WTO-compliant. A similar claim was raised by VDA following definitive disclosure.

(1335) The Commission noted that the imposition of countervailing measures – which is also WTO-compliant – and discussions with the exporting country are not mutually exclusive. Thus, this claim was rejected.

(1336) Following definitive disclosure, the GOC and the CCCME considered that the imposition of countervailing measures was not warranted in this case and that the undertaking offered by CCCME on behalf of its members should be accepted, as it had explained in detail that the undertaking is practical, can be easily monitored, is manageable and practically enforceable. Geely Group also requested the Commission to better balance the proposed measures by accepting the undertaking offered. In addition, Polestar urged the Commission to accept the price undertaking submitted by Geely Group, which was an extremely reasonable offer and it was in the interest of the Union.

(1337) The Commission assessed the undertaking offers in Section 8.4 of this Regulation.

7.12. **Conclusion on Union interest**

(1338) On the basis of the above, the conclusions reached in recital (1268) of the provisional Regulation were confirmed.

8. **DEFINITIVE COUNTERVAILING MEASURES**

8.1. **Definitive measures**

(1339) Following the provisional disclosure, several cooperating producers requested the inclusion of additional related producers in the operative part. The Commission analysed parameters such as the existence of a relationship with a cooperating producer, the production of BEVs, or substantiated evidence of plans and investments for the production of BEVs during the investigation period, as well as imminent exports to the Union. After a detailed examination of the circumstances of the entities specified in the requests, where there was no evidence that the levels of subsidization differed from their related companies, the Commission determined that several of these companies were eligible for inclusion in the operative section, which was duly executed. Similarly, the Commission dismissed one of such requests on the grounds of inadequate substantiation to warrant its inclusion.

([174]) Communication from the Commission to the European Parliament and the Council on the revised lesser duty rule in anti-dumping and anti-subsidy investigations in the EU – A review and evaluation of the application of Articles 7(2a), 8(1) and 9(4) of Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 and of the third and fourth subparagraphs of Article 12(1), the third and fourth subparagraphs of Article 13(1), and of the third and fourth subparagraphs of Article 15(1) of Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016, COM(2023)294 final, available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52023DC0294.

(1340) Following definitive disclosure Volkswagen (Anhui) Automotive Company, Ltd. requested a separate TARIC additional code from the Anhui Jianghuai Automobile Group Corp., Ltd (the 'JAC group'). It was argued that the companies act independently and that no *de facto* influence exists.

The Commission noted that the investigation had established a relationship between the company and the JAC group. In particular, JAC contributed to a recent capital increase of Volkswagen (Anhui) Automotive Company, Ltd. whereby its shares account for 25 % of the total capital ([175]). Such relationship through shareholding is also confirmed by the Volkswagen Group China ([176]). However, considering the possibility to accept undertaking offers beyond the imposition of definitive measures as mentioned in recital (1422), the Commission decided to identify each exporting producer with a specific TARIC additional code in the operative part and annex of this Regulation. In addition, the special TARIC additional codes will allow the Commission to monitor imports of the product concerned per exporting producer.

(1341) Following definitive disclosure, the Geely Group requested the inclusion of additional related producer in the operative part.

(1342) The Commission dismissed the requests on the grounds of inadequate substantiation to warrant its inclusion.

(1343) In view of the conclusions reached with regard to subsidy, injury, causation and Union interest, and in accordance with Article 15 of the basic Regulation, definitive countervailing measures should be imposed in order to prevent further injury being caused to the Union industry by the subsidised imports of the product concerned.

(1344) On the basis of the above, the definitive countervailing duty rates, expressed on the CIF Union border price, customs duty unpaid, should be as follows:

Company	Definitive countervailing duty
BYD Group: — BYD Auto Company Limited — BYD Auto Industry Company Limited — Changsha BYD Auto Company Limited — Changsha Xingchao Auto Company Limited — Changzhou BYD Auto Company Limited — Fuzhou BYD Industrial Company Limited — Hefei BYD Auto Company Limited — Jinan BYD Auto Company Limited	17,0 %
Geely Group: — Asia Euro Automobile Manufacture (Taizhou) Company Limited — Chongqing Lifan Passenger Vehicle Co., Ltd. — Fengsheng Automobile (Jiangsu) Co., Ltd. — Shanxi New Energy Automobile Industry Co., Ltd. — Zhejiang Geely Automobile Company Limited — Zhejiang Haoqing Automobile Manufacturing Company Limited — Zhongjia Automobile Manufacturing (Chengdu) Co., Ltd.	18,8 %
SAIC Group: — SAIC MAXUS Automotive Company Limited — SAIC Motor Corporation Limited — Nanjing Automobile (Group) Corporation — SAIC Volkswagen Automotive Co., Ltd. — SAIC GM Wuling Automobile Co., Ltd. — SAIC General Motors Co., Ltd.	35,3 %

([175]) https://autonews.gasgoo.com/m/70031853.html.
([176]) https://volkswagengroupchina.com.cn/en/partner/volkswagenanhui.

Company	Definitive countervailing duty
Tesla (Shanghai) Co., Ltd	7,8 %
Other cooperating companies (Annex)	20,7 %
All other companies	35,3 %

(1345) The individual company countervailing duty rates specified in this Regulation were established on the basis of the findings of this investigation. Therefore, they reflected the situation found during this investigation with respect to these companies. These duty rates are exclusively applicable to imports of the product concerned originating in the country concerned and produced by the named legal entities. Imports of the product concerned produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other companies'. They should not be subject to any of the individual countervailing duty rates.

(1346) A company may request the application of these individual countervailing duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission ([177]). The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a regulation about the change of name will be published in the *Official Journal of the European Union*.

(1347) To minimise the risks of circumvention due to the difference in duty rates, special measures are needed to ensure the proper application of the individual countervailing duties. The companies with individual countervailing duties must present a valid commercial invoice to the customs authorities of the Member States. The invoice must conform to the requirements set out in Article 1(3) of this Regulation. Imports not accompanied by that invoice should be subject to the countervailing duty applicable to 'all other companies'.

(1348) While presentation of this invoice is necessary for the customs authorities of the Member States to apply the individual rates of countervailing duty to imports, it is not the only element to be taken into account by the customs authorities. Indeed, even if presented with an invoice meeting all the requirements set out in Article 1(3) of this Regulation, the customs authorities of Member States should carry out their usual checks and may, like in all other cases, require additional documents (shipping documents, etc.) for the purpose of verifying the accuracy of the particulars contained in the declaration and ensure that the subsequent application of the rate of duty is justified, in compliance with customs law.

(1349) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume, in particular after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 23(1) of the basic Regulation. In such circumstances, an anti-circumvention investigation may be initiated, provided that the conditions for doing so are met. This investigation may, inter alia, examine the need for the removal of individual duty rate(s) and the consequent imposition of a country-wide duty.

(1350) To ensure a proper enforcement of the countervailing duties, the countervailing duty for all other companies should apply not only to the non-cooperating exporting producers in this investigation, but also to the producers which did not have exports to the Union during the investigation period.

(1351) Further to the provisional disclosure, one company Dfsk Motor Co. Ltd requested a name change to Seres Auto (Hubei) Co., Ltd. This request was accepted and the new name of this company was included in the Annex.

([177]) European Commission, Directorate-General for Trade, Directorate G, Rue de la Loi/Wetstraat 170, 1040 Bruxelles/Brussel, BELGIQUE/BELGIË.

8.2. **Release of the provisional duties**

(1352) Article 16(2) of the basic Regulation states that it is for the Commission to decide what proportion of the provisional duty is to be definitively collected.

(1353) Article 16(2) further states that in a case of threat of material injury, provisional duties are not to be collected unless it is found that the threat of material injury, in the absence of provisional measures, has developed into material injury.

(1354) In light of the findings in the present case and given that it could not be positively established that in the absence of provisional measures, the threat of injury would have developed into material injury, the Commission considered that, pursuant to Article 16(2) of the basic Regulation, the amounts secured by way of the provisional countervailing duty, imposed by the provisional Regulation, should be released and not collected.

(1355) Following provisional disclosure, NIO argued that the provisional duties should not be definitively collected because the Commission did not respect the four-week pre-disclosure period. SAIC group also argued that the provisional duties should not be collected due to the late publication of the provisional Regulation. Polestar also argued that the Commission should not collect the provisional duties as the Commission did not establish material injury.

(1356) Given the conclusion in recital (1353) of this Regulation, these claims were found to be moot.

8.3. **Retroactive imposition of countervailing duties**

(1357) As indicated in recital (8) of this Regulation, the Commission made imports of the product under investigation subject to registration by the registration Regulation in view of the possible retroactive application of any countervailing measures under Article 24(5) the basic Regulation.

(1358) Pursuant to Article 16(4) of the basic Regulation, duties may be levied retroactively 'on products which were entered for consumption no more than 90 days prior to the date of application of provisional measures'.

(1359) In light of the findings in the present case and given that it could not be positively established that injury which would be difficult to repair started to materialise before the end of the investigation, the Commission considered that one of the legal conditions under Article 16(4) of the basic Regulation was not met and, therefore, the duties should not be levied retroactively on the registered imports.

8.4. **Undertakings**

(1360) Following definitive disclosure, CCCME submitted, on behalf of the following 12 exporting producers an offer for a price undertaking within the deadline specified in Article 13(2) of the basic Regulation:

— SAIC Motor Corporation Limited

— Zhejiang Geely Automobile Company Limited

— BYD Auto Industry Company Limited

— BMW Brilliance Automotive Ltd.

— Great Wall Motor Company Limited

— NIO Holding Co., Ltd

— Chery Automobile Co., Ltd

— China FAW Corporation Limited

— Dongfeng Motor Group Co., Ltd.

— XPeng Inc.

— Seres Auto Co., Ltd.

— Anhui Jianghuai Automobile Group Corp., Ltd. (not inclusive of Volkswagen (Anhui) Automotive Co., Ltd).

(1361) In addition, three exporting producers (of which two from the Geely Group), offered alternative price undertakings in case the one offered with CCCME would not be accepted. The alternative undertakings were offered by the following exporting producers:

— SAIC Group

— Smart Automobile Co., Ltd. ('Smart') (Geely Group)

— Volvo Car Asia Pacific Investment Holding Co (Geely Group).

(1362) According to Article 13 of the basic Regulation, a price undertaking offer must be adequate to eliminate the injurious effect of the subsidies and its acceptance must not be considered impractical. The Commission assessed the offers in view of these criteria and considered that the offers were not adequate, and its acceptance would be impractical for the reasons set out below.

8.4.1. *CCCME*

(1363) The Commission observed that the proposed offer was inadequate with respect to the suggested minimum import price ('MIP'). Indeed, the CCCME offered a single MIP for a wide variety of product models, covering all PCNs and products from exporting producers with different duty rates. The MIP reflected a duty rate of 21,3 % and did not take into account that the SAIC group would be subject to a higher duty rate.

(1364) In addition, the CCCME offered an indexation of the MIP, based on price quotations of the Lithium-ion Batteries Price Index. The suggested indexation was considered inadequate, taking into account that the remaining significant portion of the production costs are not only exposed to price volatility but also lack usable benchmarks and monitoring tools.

(1365) CCCME also proposed the possibility of selling under the MIP without being subject to a duty rate lower than the injurious level of subsidisation that was established in the investigation. In particular, it proposed the implementation of an annual quota for the initial three-year period, during which imports made within the quota could be sold at a price below the MIP level and would benefit from a discounted duty level. Therefore, the Commission considered that this arrangement would not be adequate to eliminate the injurious effect of the subsidies.

(1366) The Commission also concluded that the acceptance of such undertaking would be impractical within the meaning of Article 13 of the basic Regulation, for the reasons set out below.

(1367) A BEV is a highly sophisticated product, with multiple models having multiple configurations, resulting in substantial price differences between product types and models, also related to the options taken. The high number of product types entails a high risk of cross-compensation among the different product types.

(1368) In addition, most of the Chinese exporting producers, subject to the undertaking offer, have extremely complex corporate structures with hundreds of companies within each group and multiple sales channels across China, the Union, and the rest of the world. This complexity, added to the fact that several exporting producers included in the offer produce and sell various other products (combustion cars, hybrid vehicles, etc.) and services through the same multiple sales channels and to the same customers entails a high risk of cross-compensation. This renders the undertaking unenforceable and thus impractical within the meaning of Article 13 of the basic Regulation, also taking into account that some members have not fully cooperated in the investigation.

8.4.2. *Alternative undertaking offers*

(1369) Having regard that the undertaking offered by the CCCME on behalf of 12 exporting producers was not adequate and impractical and therefore could not be accepted, the Commission assessed undertaking offered alternatively by four exporting producers.

8.4.2.1. SAIC Group

(1370) The SAIC Group offered an alternative undertaking, very similar to the one offered with CCCME. However, contrary to the CCCME, SAIC proposed several MIPs for different PCNs which do not cover all models sold by the group. As already mentioned in recital (1367) above, the complexity of the product concerned, and the high number of product types entails a risk of cross-compensation. The undertaking offered by the SAIC group did not contain any commitment to eliminate this risk. The offer included an adjustment of the MIP based on the price of batteries. However, BEV prices are affected by substantial additional cost items at volatile prices that were not addressed in the offer, nor were their benchmarks and means to monitor them.

(1371) In addition, the enforcement and the monitoring of undertakings requires strong cooperation and transparency between the Commission and the exporting producer. In this regard, and as described in Section 3.3.2, the SAIC group did not fully cooperate with the Commission during the investigation. This lack of cooperation raises strong doubts as to the future capacity of the SAIC group to provide the necessary information that would allow the commission to properly monitor and implement the undertaking. Therefore, any undertaking offered by the company may be not practical and not enforceable.

(1372) The remarks regarding the undertaking offered by CCCME in recitals (1364)-(1368) of this Regulation equally applied to the undertaking offered by SAIC.

(1373) In view of the above, the Commission concluded that the offer submitted by the SAIC group was not adequate and impracticable.

8.4.2.2. SMART

(1374) The undertaking offered by Smart consisted of an MIP for each of the product types (PCNs) manufactured and sold during the IP. The MIPs were based on the average CIF price of the product types in the IP, adjusted downwards by deducting the post-importation costs, and a raw material cost decrease. Accordingly, the level of these MIPs did not result in any increase of the price to a level that would be adequate to eliminate the injurious effect of the subsidisation.

(1375) In addition, the Geely group, to which the exporting producers belongs, did not fully cooperate (see Section 3.3.3 of this Regulation) with the Commission, thus the findings of recital (1371) of this Regulation, are equally applicable.

(1376) Finally, as already set out above in recital (1367) of this Regulation with regard to other offers, the complexity of the product concerned, the numerous product types, models (even within one PCN for which one MIP price has been proposed), complex company structure and complex trade channels entail a high risk of cross-compensation.

(1377) In view of the above, the Commission concluded that the offer submitted by Smart was not adequate and impracticable.

8.4.2.3. Volvo Car Asia Pacific Investment Holding Co.

(1378) Volvo Car Asia Pacific Investment Holding Co. presented two offers, each pertaining to a specific brand.

8.4.2.3.1. Offer 1: Volvo Car Asia Pacific Investment Holding Co.

(1379) The offer included two alternative price undertakings for a specific brand: Option A with MIPs corresponding to all relevant PCN proposed at the level of the CIF price established for Geely Group during the IP. Option B was as well based on the level of the CIF prices to which the subsidy margin determined in the investigation for Geely Group was added. The remaining commitments were similar in both proposed variants of the undertaking.

(1380) It was proposed to limit the application of the undertaking to a period of 26 months and to a certain volume.

(1381) The Commission observed that the proposed MIPs were at the same level as the price established during the investigation and therefore did not eliminate the injurious effect of subsidization.

(1382) Next the Commission analysed option B where MIPs were proposed at the CIF level increased by the subsidy rate determined for the Geely Group. However, both option A and option B included a downward adjustment of the CIF value due to the reduction in the battery prices. Also, the proposals included an indexation of the MIPs, based on the battery price which was considered inadequate given that the remaining substantial proportion of production costs are not only susceptible to price volatility but also lack reliable benchmarks and effective monitoring tools. The Commission further concluded that the undertaking is not adequate for the same reasons as already mentioned in recitals (1375) – (1376) of this Regulation.

(1383) Moreover, the offer contained a proposal to assess the conformity with the MIP not for each individual sales transaction but on the average prices per quarter due to the fact that within one PCN there are various models with different price ranges. This mechanism would however allow the exporting producer to export to the Union some products below the MIP and some above, which is against the main objective of the MIP and undertaking, namely increasing the price to the level eliminating the injurious effect of the subsidisation. The proposed mechanism not only entailed a risk for cross-compensation, but even legalised it.

(1384) Also the Geely group, to which the exporting producer belongs, did not fully cooperate (see Section 3.3.3 of this Regulation) with the Commission, thus, in the findings as already mentioned in recitals (1371) of this Regulation are equally applicable.

(1385) In view of the above, the Commission concluded that the offer submitted by Polestar was not adequate and impracticable.

8.4.2.3.2. Offer 2: Volvo Car Asia Pacific Investment Holding Co

(1386) The second price undertaking 'offer 2' was limited to another specific brand and similar to 'offer 1' described above, also in two options, which were however limited to an even shorter period of time – until the end of 2025.

(1387) Option A could not be accepted for the same reasons as described in recital (1381) of this Regulation.

(1388) In the offer it was proposed to assess the conformity of the sales prices with the MIP based on the average quarter prices since within one PCN there are various models with different price ranges. This mechanism would however allow the company to export to the Union some products below the MIP and some above, what is against the main objective of the price undertaking, namely increasing the price to the level eliminating the injurious effect of the subsidisation. The proposed mechanism not only entailed a risk for cross-compensation, but rather legalised it.

(1389) In option A, a MIP was proposed at the level on the CIF price in the IP. The proposed MIP did not eliminate any level of subsidisation. To the contrary, a downward adjustment of the CIF value determined for the Geely group was proposed due to a decrease of the battery prices as well as due to technical differences of the models sold compared to other models sold by Geely. Also, the offer contained several MIPs for different PCNs within one model, however, it did not cover all PCNs sold by the group neither all PCNs expected to be sold in the specific model.

(1390) In option B, the subsidy margin was added to the adjusted CIF value (including a downward adjustment due to a decrease of the battery prices as well as due to technical differences of the models sold compared to other models sold by Geely), however the undertaking offer covered only one PCN and limited number of the products sold to the Union. Therefore, there was a high risk of cross-compensation.

(1391) Neither of the options considered the total number of models sold by the Geely Group within the PCNs included in the offer. In general, a BEV is a highly sophisticated product, with multiple models having multiple configurations, resulting in substantial price differences between product types and models, also related to the options taken. The high number of product types entails a high risk of cross-compensation among the different product types.

(1392) Moreover, the Geely group has an extremely complex corporate structure with several hundreds of related companies and multiple sales channels across China, the EU, and the rest of the world. This complexity, added to the fact that Geely group produces and sells various other products (combustion cars, hybrid vehicles, etc.) and services through the same multiple sales channels and to the same customers entailed a high risk of cross-compensation.

(1393) In addition, the Geely group, to which the exporting producer belongs, did not fully cooperate (see Section 3.3.3 of this Regulation) with the Commission, thus, the findings as already mentioned in recital (1371) of this Regulation are equally applicable. In view of the above, the Commission concluded that the offer submitted by Volvo was not adequate and impracticable.

(1394) The Commission sent a letter to all applicants, setting out the above reasons for rejecting their undertaking offers. All applicants, as well as the Geely group, submitted comments thereto. These comments were made available to interested parties on the case file.

CCCME

(1395) Regarding the MIP proposal and the Commission's consideration to be inadequate because the proposal offered a single MIP for various BEVs types and models, the CCCME claimed that its approach aligned with the EU's past practices and aimed to simplify the implementation of the price undertaking. The CCCME however presented a revised proposal that included MIPs per PCN and an annual quota of sales at MIPs.

(1396) With regard to cross-compensation, the CCCME claimed that the Commission's concerns about cross-compensation between BEVs were unfounded, as the new proposal contained MIPs per PCN, and thus effectively addressed this issue. Furthermore, it argued that the transparency of the EU BEV market and the limited number of renowned exporting producers further mitigates this risk. The CCCME offered to include a clause in the undertaking requiring that the exporting producers included in its undertaking offer to provide their total export data to the EU, including BEVs, hybrids and gasoline-powered vehicles, for verification purposes.

(1397) With regard to monitoring and compliance, the CCCME claimed that the Commission has the ability to monitor BEV sales and prices through a variety of databases, thereby ensuring compliance and deterring cross-compensation.

(1398) Concerning the inappropriateness of indexing the MIP only on battery prices, the CCCME argued that its proposal was driven by the fact that batteries are the most important cost component of BEVs. Similarly, it argued that there are precedents as in other cases the indexation of the MIP has been linked to the main raw material or price component of the product under investigation.

(1399) Concerning quantity arrangements, the CCCME indicated its willingness to discuss and adjust the reduced countervailing duty rate for the quantity arrangement. The CCCME noted that the Commission had found a threat of injury, not actual injury, to the Union industry and that its proposed MIP reflected the alleged subsidisation and was intended to offset it in accordance with the Commission's assessment. Similarly, it argued that its proposal included both a price component and a quantity component, thus addressing the Commission's concerns. The quantity covered by the countervailing duty rates was less than the Chinese BEV exports to the EU in 2022, which should not cause injury to the EU industry.

(1400) The Commission carefully analysed the comments made but found no reasons to change its conclusions as set out in Section 8.4.1 above. The CCCME attempted to address some rejection reasons by submitting a new undertaking offer. This offer was, however, made after the deadline and could already be rejected for this reason. Nevertheless, in view of the specificities of the case, the Commission analysed it and found that, even though the new offer no longer contained one MIP only, but one MIP per PCN, and was more accurate, it still did not address a number of the Commission's concerns as regards the adequacy of the offer. In particular, the updated MIPs per PCN were still based on the average weighted duty, while the specific duty levels, in particular, the higher level for the SAIC group, were not taken into account. Accordingly, the proposed MIPs will not remove the injurious effects of the subsidies related to a large number of exports sales. Also, the proposal still contained an annual quota of sales below the MIP levels, which could benefit from a lower duty than the one established in the investigation. Therefore, also the updated offer was not considered adequate.

(1401) As regards the impracticability, the Commission considered that, even in a scenario where all exporting producers would fully cooperate, which was not the case during the investigation, in the monitoring and enforcement, the undertaking would still seem impracticable at this stage, in view of the large number of transactions, complicated structure and sales channels of the exporting producers, the inclusion of non-sampled companies that were not investigated, and the wide variety of models, product types and options to be included.

SAIC Group

(1402) The SAIC Group supported the undertaking offer of the CCCME and showed its willingness to adjust the PCN-based MIPs to eliminate the subsidization found in the investigation and to explore alternative MIPs with the Commission. It also proposed to include a clause requiring the reporting of all export sales to the EU to ensure transparency and effective implementation of the undertaking.

(1403) The SAIC Group argued that the annual quota in its undertaking offer is set at a non-injurious level, which is significantly lower than the export volume of BEVs of the SAIC group during the IP, and therefore has no injurious effect on the EU industry. It also argued that the MIP adjustment mechanism based on battery prices is workable as batteries are the main cost driver for BEVs.

(1404) The Commission considered the arguments of the SAIC Group but confirmed in the absence of a new or updated proposal its conclusions set out in Section 8.4.2.1 above. In particular, in view of the fact that the SAIC Group only partially cooperated with the investigation, the Commission disagreed with its statement that transparency and effective implementation of the undertaking can be ensured. Also, the annual quota of sales below the MIP that could benefit from a reduced duty level meant that the injurious effect of the subsidisation would not be fully removed.

Smart Automobile Co., Ltd. ('Smart') (Geely Group)

(1405) Smart requested the Commission to reassess the offer, taking into account its claims that the company operates independently from the Geely group and should not be considered part of it. Furthermore, the company argued that it could guarantee complete transparency regarding its sales channels and pricing, thereby ensuring full compliance and practicality of the undertaking. Additionally, the company noted that its current sales prices in the European Union market was aligned with or above that of its direct competitors, and it was open to discussing any necessary adjustments to the MIP.

(1406) The Commission carefully considered the arguments brought forward by Smart, but confirmed its conclusions as set out in Section 8.4.2.2 above. In particular, the level of the proposed MIPs did not result in any increase of the price to a level that would be adequate to eliminate the injurious effect of the subsidisation. Also, an undertaking offer of a company cannot be assessed independently from the group or company that owns and manages the production site where the products concerned are being produced before being exported to the Union.

Volvo Car Asia Pacific Investment Holding Co (Geely Group)

— **Offer 1**

(1407) The company claimed that there is no risk of cross-compensation between the Geely Group and the brand to which the offer referred to as the prices of the cars are set on the basis of established transfer pricing principles, ensuring transparency and compliance with various laws and regulations. The brand company's accounting system can track the price paid by customers for each car, thereby preventing cross-compensation. In addition, as an independent listed company, the company is subject to extensive disclosure requirements and strict accounting standards, and transactions between the company and related parties are governed by laws and policies that ensure arm's length principles. The company also has internal guidelines and policies in place to prevent cross-compensation. Similarly, its corporate structure and sales channels are straightforward and do not involve the wider Geely Group. The company's financial records enable the Commission to verify compliance with the price undertaking.

(1408) Concerning the adequate level of the undertaking offer, the company claimed that the proposed prices in option A effectively eliminate any threat of injury as stipulated under the last paragraph of Article 13(1) of the basic Regulation. These prices are not designed to address subsidisation. Also, as prices of the brand model are already high, the inclusion of the subsidy margin (option B) calculated by the Commission in these already high prices would result in unreasonable MIP levels. The adjustments made to the proposed MIPs were necessary, in particular to take account of significant differences between the price of batteries during the IP and current prices and would not affect the removal of the threat of injury.

(1409) The company claimed that the Geely Group's lack of cooperation was irrelevant to its price undertaking offer. The enforcement of the price undertaking does not necessitate the involvement of the Geely Group, except for the signing of certified invoices. It also argued that compliance verification with the terms of the undertaking could be conducted entirely through its brand EU headquarters, which fully cooperated during the investigation.

(1410) The Commission carefully considered these comments, but confirmed its conclusion as set out in Section 8.4.2.3 above. In particular, as regards the practicability of the undertaking, the Commission disagreed with the statement that the enforcement of the price undertaking does not need the involvement of the Geely group. An undertaking offer of a company cannot be assessed, monitored and enforced independently from the group or company that owns and manages the production site where the products concerned are being produced before being exported to the Union.

(1411) As regards the adequacy of the offer, the Commission considered that a number of the models concerned by the MIPs were not exported yet to the Union in the IP, which rendered the setting of an adequate MIP already particularly challenging. In addition, as the proposed MIP levels in option A were lower than the CIF prices in the IP on which the MIPs were based, the Commission reiterated that this offer was not adequate as it did not eliminate the injurious effect of the subsidies. Option B included the amount of subsidisation found during the IP, but also a downward adjustment based on the evolution of battery prices after the IP. The latter diluted the effect of the upward revision of the price needed to eliminate the injurious effect of the subsidies and resulted in a MIP which did not remove fully the level of subsidisation found in the IP. Moreover, the Commission observed, based on the available data ([178]), that the decrease of the battery prices was not reflected in the sales prices of the product concerned to the final customers. Furthermore, the price evolution of other input materials than batteries with substantial impact on the total cost of production was not considered. Finally, as regards the claim that a MIP is not required to offset subsidisation but should be considered adequate if it eliminates any threat of injury, the Commission disagreed and stressed that, as a rule, the lesser duty rule is not applied in anti-subsidy investigations. Hence, the Commission is of the view that, in general terms, the injurious effect of the subsidies can only be eliminated by a full removal of the level of subsidisation that was found in the investigation. Also, there was no factual basis to limit the MIP to the elimination of any threat of injury, as the Commission did not make any findings about non-injurious price levels in this investigation.

([178]) https://ev-database.org.

Volvo Car Asia Pacific Investment Holding Co (Geely Group)

— **Offer 2**

(1412) The company claimed that the Commission's assessment of cross-compensation risk was incorrect. It argued that prices for the BEV model in question are transparently set based on established transfer price principles, and each customer purchases one BEV, making cross-compensation at the customer level impossible. As an independent listed company, the company adheres to laws prohibiting cross-compensation. It emphasized its compliance with extensive laws and regulations. The company's culture of compliance with internal directives and policies further prevents cross-compensation. All transactions are meticulously recorded in financial records, allowing the Commission to verify compliance.

(1413) The company also argued that the scope of the undertaking is limited, with the MIP being close to the market price, thereby limiting the potential for artificially high margins. Additionally, the undertaking was of limited duration and volume, further reducing the risk of cross-compensation. The exclusion of certain PCNs from the price undertaking aimed to ensure compliance with the MIP, and verification of cross-compensation between PCNs was feasible due to significant physical differences and individual serial numbers.

(1414) The company argued that the Commission can verify that the price of the model in question does not vary between different types of retailers. Despite the complexity of the Geely Group's structure, the brand's company structure and sales channels remain straightforward and independent of the wider Geely Group.

(1415) The company further claimed that the MIP proposed under option A were designed to remove the threat of injury and not to eliminate subsidisation and that the high level of subsidisation found for the Geely group was partly based on the use of facts available under Article 28 of the basic Regulation. The model concerned was priced at the top of its segment, and the CIF prices used to determine the MIPs were already very high. Adding the high subsidy margin calculated by the Commission to these already high prices would lead to unreasonable MIP levels. Adjustments to the MIP were necessary to reflect differences in battery prices and physical characteristics between the model concerned and the models sold by the group in the IP. These adjustments do not affect the removal of the threat of injury.

(1416) Finally, the company claimed that the Commission's assessment about the unenforceability of the price undertaking due to the Geely Group's lack of cooperation was irrelevant. The company argued that the enforcement requires minimum participation of the Geely Group and compliance can be verified entirely through its brand EU headquarters, which fully cooperated during the investigation.

(1417) The Commission carefully analysed the arguments brought forward, but confirmed its conclusions set out in Section 8.4.2.4 above. In particular, as regards the practicability of the undertaking, the Commission disagreed with the statement that the enforcement of the price undertaking does not need the involvement of the Geely group. An undertaking offer of a company cannot be assessed, monitored and enforced independently from the group or company that owns and manages the production site where the model concerned was produced before being exported to the Union.

(1418) As regards the adequacy of the offer, the Commission considered that the model concerned was not exported to the Union in the IP, which rendered the setting of an adequate MIP already particularly challenging. In addition, as the proposed MIP levels in option A were lower than the CIF prices in the IP on which the MIPs were based, the Commission reiterated that this offer was not adequate as it did not eliminate the injurious effect of the subsidies. Option B included the amount of subsidisation found during the investigation period, but adjusted downwards, based on the evolution of battery prices after the IP and physical differences between the model concerned and the models sold by the group in the IP on the basis of which the MIPs were established. These downward adjustments diluted the effect of the upward revision of the price needed to eliminate the injurious effect of the subsidies as established in the investigation. Moreover, as already indicated in recital (1411) above, the Commission observed that the decrease of the battery prices, as claimed by the company, was not reflected in the sales prices of the product concerned to the final customers. Also, the price evolution of other input materials than batteries were not considered. Therefore, the proposed indexation was considered inadequate.

(1419) Finally, as regards the claim that a MIP is not required to offset subsidisation but should be considered adequate if it eliminates any threat of injury, the Commission disagreed and stressed that, as a rule, the lesser duty rule is not applied in anti-subsidy investigations. Hence, the Commission is of the view that, in general terms, the injurious effect of the subsidies can only be eliminated by a full removal of the level of subsidisation that was found in the investigation. Also, there was no factual basis to limit the MIP to the elimination of any threat of injury, as the Commission did not make any findings about non-injurious price levels in this investigation.

Geely Group

(1420) The Geely Group, though not having submitted an offer on behalf of the group, expressed its disappointed that the Commission considered the undertaking offers to be insufficient. The Geely Group reiterated that it fully supports its portfolio companies and that it remained committed to finding an undertaking solution that would satisfy the Commission. It did not agree with the assertion that partial non-cooperation would have an adverse impact on the undertaking. The Geely Group claimed to have cooperated fully in what has been an unprecedented case in terms of scope, complexity, and tight deadlines.

8.4.2.4. Conclusion on price undertaking offers

(1421) Having analysed the offers in light of the comments of the parties, the Commission considered that they did not satisfy the necessary requirements of adequacy, effectiveness and enforceability. Therefore, the Commission concluded that the price undertaking offers could not be accepted.

(1422) However, in view of the specificities of the BEVs market, which is in transition and rapidly evolving, the complexity of the product, and in light of the exceptional circumstances as referred to in Article 13(2) of the basic Regulation, consultations are ongoing with a view to identifying price undertakings that are effective and enforceable. A mutually agreed solution with the GOC in the form of an undertaking with the CCCME and/or with individual exporting producers can be identified and implemented even after the imposition of definitive measures. Should such a solution be identified and implemented, the countervailing duties will not be collected for the exporting producers concerned on the basis of the applicable legal provisions, including Article 13 of the basic Regulation.

8.5. **Suspension of the measures**

(1423) Following definitive disclosure, the GOC, the CCCME, Company 22 and Polestar claimed that the Commission should suspend the measures, if imposed, in accordance with Article 24(4) of the basic Regulation.

(1424) According to the GOC and the CCCME, the Commission acknowledged that the Union BEV market was in a transition phase and was continuously evolving. Moreover, they considered that market conditions changed due to the sharp fall in demand for BEVs, which would be exacerbated by the countervailing measures, which in turn would lead to higher prices restricting even further the supply of affordable BEVs in the Union market. Finally, they claimed that this situation endangered the feasibility of the 2035 ICE phase-out plan and, therefore, the suspension of the measures was in the Union interest.

(1425) The Commission found that the claim for suspension under Article 24(4) of the basic Regulation was generic and unsubstantiated as regards the sharp fall in demand for BEVs (it was based solely on a press article regarding the German market in July 2024 ([179])).

([179]) https://cleantechnica.com/2024/08/07/evs-at-19-1-share-in-germany-bevs-still-overpriced.

(1426) Polestar also considered that market conditions changed since the investigation period and that the BEV industry was in a negative spiral. According to Polestar, this negative trend became visible only in 2024, so that at this stage protection was coming too soon and would have the opposite of the intended effect, by slowing the Union industry's growth and making it less competitive. Moreover, suspending the measures for a brief period would make it less likely for the threat of injury to materialise into actual injury. Measures could provide breathing space to Union producers only once the positive momentum for the transition to electrification came back. Polestar specified that it supported the objective of the investigation in view of the Union's transition to electrification in fair conditions, but sought a suspension of nine months, to be further extended afterwards for the maximum period of one year, as more time was needed than the duration of the investigation for Polestar and the Union OEMs to adjust to the new situation. Thus, such suspension would be in the interest of the Union.

(1427) The Commission considered that the Union industry is in strong need to reach economies of scale, so as to decrease its unit cost of production, which in turn will allow the Union industry to potentially decrease its sales prices. If the Commission did not impose countervailing measures, the Union industry would not be able to produce and sell enough BEVs in order to obtain such economies of scale and decrease prices in the future. Therefore, in such a situation, a suspension of the measures immediately after imposition, even for a brief period, would render moot any positive effect of the measure and would delay even more restoring fair market conditions in the EU so that Union producers can benefit from economies of scale decreasing their unit cost of production. The Commission also noted that Polestar's suspension claim appeared to fit its specific situation and needs as a related importer. However, it did not apply to the totality of the Union industry, composed both by Union OEMs importing and by those not importing from China, as well as both by legacy OEMs transitioning to electrification and by original BEV manufacturers.

(1428) Thus, the Commission rejected the claim for suspension.

8.6. **Duration of the measures**

(1429) Geely Group requested the Commission to better balance the proposed measures by limiting their duration.

(1430) The Commission noted that this request was unsubstantiated and did not explain why such limited duration would be sufficient to address the threat of injury by the subsidised low-priced Chinese imports. Therefore, this claim was rejected.

9. **FINAL PROVISIONS**

(1431) In view of Article 109 of Regulation 2018/1046 of the European Parliament and of the Council ([180]), when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month.

(1432) The Committee established by Article 15(1) of Regulation (EU) 2016/1036 did not deliver an opinion on the measures provided for in this Regulation,

([180]) Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive countervailing duty is imposed on imports of new battery electric vehicles, principally designed for the transport of nine or less persons, including the driver, excluding L category vehicles according to Regulation (EU) No 168/2013 and motorcycles, propelled (regardless of the number of wheels set in motion) solely by one or more electric motors, including those with an internal combustion range extender (an auxiliary power unit), currently falling under CN code ex 8703 80 10 (TARIC code 8703 80 10 10) and originating in the People's Republic of China.

2. The rates of the definitive countervailing duty applicable to the net, free-at-Union-frontier price, before duty, of the product described in paragraph 1 and produced by the companies listed below shall be as follows:

Company	Definitive countervailing duty	Definitive TARIC additional code
BYD Group:	17,0 %	
BYD Auto Company Limited		89HH
BYD Auto Industry Company Limited		89HI
Changsha BYD Auto Company Limited		89HJ
Changsha Xingchao Auto Company Limited		89HK
Changzhou BYD Auto Company Limited		89HL
Fuzhou BYD Industrial Company Limited		89HM
Hefei BYD Auto Company Limited		89HN
Jinan BYD Auto Company Limited		89HO
Geely Group:	18,8 %	
Asia Euro Automobile Manufacture (Taizhou) Company Limited		89HP
Chongqing Lifan Passenger Vehicle Co., Ltd.		89HQ
Fengsheng Automobile (Jiangsu) Co., Ltd.		89HR
Shanxi New Energy Automobile Industry Co., Ltd.		89HS
Zhejiang Geely Automobile Company Limited		89HT
Zhejiang Haoqing Automobile Manufacturing Company Limited		89HU
Zhongjia Automobile Manufacturing (Chengdu) Co., Ltd.		89HV
SAIC Group:	35,3 %	
SAIC MAXUS Automotive Company Limited		89HW
SAIC Motor Corporation Limited		89HX
Nanjing Automobile (Group) Corporation		89HY
SAIC Volkswagen Automotive Co., Ltd.		89HZ
SAIC GM Wuling Automobile Co., Ltd.		89IA
SAIC General Motors Co., Ltd.		89IB

Company	Definitive countervailing duty	Definitive TARIC additional code
Tesla (Shanghai) Co., Ltd	7,8 %	89BZ
Other cooperating companies (Annex)	20,7 %	
All other companies	35,3 %	8999

3. The application of the individual duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the Member States' customs authorities of a valid commercial invoice, on which shall appear a declaration dated and signed by an official of the entity issuing such invoice, identified by his/her name and function, drafted as follows: 'I, the undersigned, certify that the (volume) of new battery electric vehicles sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in the People's Republic of China. I declare that the information provided in this invoice is complete and correct.' If no such invoice is presented, the duty applicable to all other companies shall apply.

4. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

The amounts secured by way of the provisional countervailing duties pursuant to Implementing Regulation (EU) 2024/1866 shall be definitively released.

Article 3

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 29 October 2024.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

COOPERATING CHINESE EXPORTING PRODUCERS NOT SAMPLED

Cooperating exporting producers	Related producers	Definitive TARIC additional code
Aiways Automobile Co., Ltd.	Aiways Automobile Co., Ltd.	89FW
	Jiangxi Yiwei Automobile Manufacturing Co., Ltd.	89FX
Anhui Jianghuai Automobile Group Corp., Ltd.	Anhui Jianghuai Automobile Group Co., Ltd.	89FY
	Volkswagen (Anhui) Automotive Co., Ltd	89FZ
BMW Brilliance Automotive Ltd.	BMW Brilliance Automotive Ltd.	89GA
	Brilliance Xinri New Energy Automobile Co., Ltd.	89GB
	Spotlight Automotive Ltd.	89GC
Chery Automobile Co., Ltd.	Chery Automobile Co., Ltd.	89GD
	Chery New Energy Automobile Co., Ltd	89GE
China FAW Corporation Limited	Audi FAW NEV Co., Ltd.	89GF
	Changan Mazda Automobile Corporation Ltd.	89GG
	China FAW Corporation Limited	89GH
	FAW Toyota Motor Co., Ltd.	89GI
	FAW-Volkswagen Automotive Co., Ltd	89GJ
	Jiangsu Guoxin New Energy Passenger Car Co., Ltd.	89GK
Chongqing Changan Automobile Company Limited	Chongqing Changan Automobile Company Limited	89GL
	Chongqing Lingyao Automobile Co., Ltd.	89GM
	Hefei Chang ‘an Automobile Co., Ltd.	89GN
	Nanjing Chang ‘an Automobile Co., Ltd.	89GO
Dongfeng Motor Group Co., Ltd.	Seres Auto (Hubei) Co., Ltd.	89GP
	Dongfeng Honda Automobile Co., Ltd.	89GQ
	Dongfeng Liuzhou Motor Co., Ltd.	89GR
	Dongfeng Motor Company Ltd.	89GS
	Dongfeng Motor Group Co., Ltd.	89GT
	Dongfeng Peugeot Citroen Automobile Company Ltd.	89GU
	eGT New Energy Automotive Co., Ltd.	89GV
	Seres Auto Co., Ltd.	89GW
	Voyah Automobile Technology Co., Ltd.	89GX
Great Wall Motor Company Limited	Great Wall Motor Company Limited Taizhou Branch	89GY
	Hebei Changzheng Automobile Manufacturing Co. LTD	89GZ
	Rizhao Weipai Automobile Co., Ltd.	89HA

Cooperating exporting producers	Related producers	Definitive TARIC additional code
Leapmotor Automobile Co., Ltd.	Leapmotor Automobile Co., Ltd.	89BW
Nanjing Golden Dragon Bus Co., Ltd.	Nanjing Golden Dragon Bus Co., Ltd.	89BX
NIO Holding Co., Ltd.	NIO (Anhui) Co., Ltd.	89HB
	NIO Co., Ltd.	89HC
	NIO Technology (Anhui) Co., Ltd.	89HD
XPeng Inc.	XPeng Inc.	89HE
	Zhaoqing Xiaopeng New Energy Investment Co., Ltd.	89HF
	Zhaoqing Xiaopeng New Energy Investment Co., Ltd. Guangzhou Branch	89HG